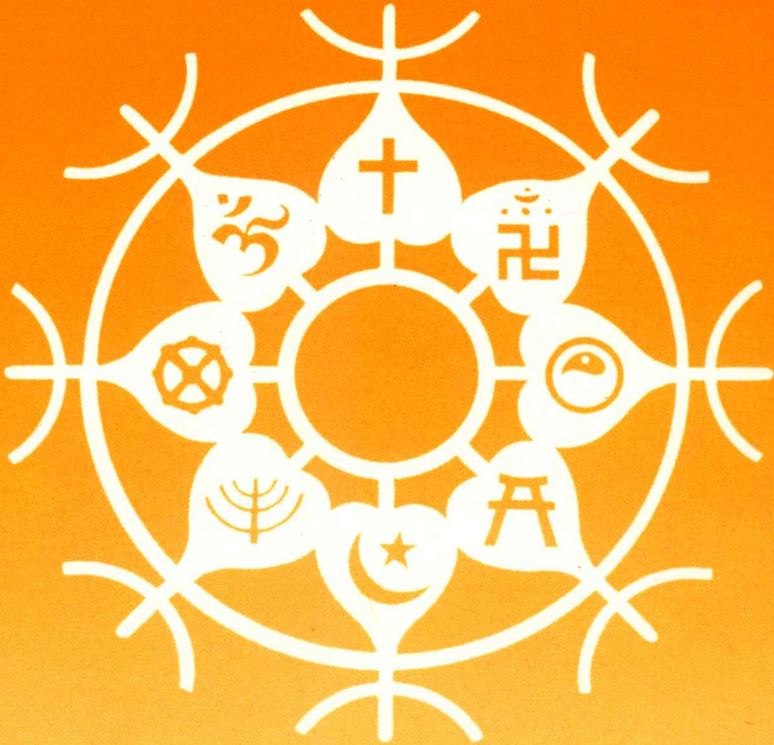


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FREEDOM OF RELIGION

January-March 2006

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CONTENT

<i>Editorial: "Freedom of Religion: From Tolerated Practice to Human Right?"</i>	3
	<i>William Sweet</i>
1. Jacques Maritain and Freedom of Conscience	29
	<i>William Sweet</i>
2. Religious Freedom	45
	<i>Warayuth Sriwarakuel</i>
3. The Problem of Justifying the Right to Freedom of Religion	51
	<i>Robert A. Delfino</i>
4. Religious Pluralism and Freedom of Religion	67
	<i>Jove Jim S. Aguas</i>
5. Religion and the American Framing	81
	<i>Stephen F. Schneck</i>
6. The Non-Discriminatory State: Toward a Model of Church-State Relationship and Freedom of Religion in Nigeria	95
	<i>Pantaleon Iroegbu</i>
7. Reconciling the Madrassah with the School: Freedom of Religion, Education, and the Dilemma of Contemporary Muslims	117
	<i>Ghazala Irfan</i>
8. The Right to Religion	129
	<i>Bambang Sugiharto</i>

Editorial

FREEDOM OF RELIGION

From Tolerated Practice to Human Right

1. Introduction

Freedom of religion is asserted in the constitutions and the charters and bills of rights of nations around the world, and yet it is one of the most contested of the basic human freedoms. From the 'Rock Edicts' of King Piyadasi in the third century BCE, to the *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* of 1992,¹ we find repeated the statement that communities and individuals should be free to believe and to worship as they wish, and not be subject to compulsion or restriction on matters of religion. At the same time, however, such freedom has consistently met with resistance if not outright opposition, and even today many countries attempt to restrict not only change of belief or conversion, but the exercise of religious practice.

To respond to this opposition, then, it is important to know exactly what this freedom is, what it means, and on what grounds one can argue for it. There are many other related issues that need to be addressed besides. To begin with, there are conceptual questions, such as: What is 'religion'? That is, what practice or practices are covered by the claim to this freedom? What is distinctive of this freedom: is it different from, for example, freedom of thought or opinion? Who can claim this freedom? There are several practical matters that arise as well. What does this freedom entitle one to do? What is its place in the public sphere, that is, in relation to national and international law, but also to matters of social and public policy and politics? How does this freedom bind in practice, and on whom? How and how far does it limit civil authorities, and what limits, if any, can be reasonably imposed on it?

In this issue of the *Journal of Dharma*, the authors explore these questions concerning how to understand this freedom and how to respond to some of the challenges to it in the contemporary world.

¹General Assembly resolution 47/135, 18 December 1992; for the text, see http://www.unhchr.ch/html/menu3/b/d_minori.htm.

To begin, however, it is important to know something of the history of the notion of freedom of religion. By showing how this freedom has been understood and what justifications of it have been given, we will have more of a context for considering and reflecting on several recent cases where this freedom has been appealed to or contested. This will, in turn, help to answer some of the preceding questions or, at least, suggest where research on this theme needs to be done.

2. Historical Roots

The term 'freedom of religion' is a recent one, although the origin of this notion may be traced to antiquity, where there are references to religious liberty and religious tolerance. (While these latter two terms do not mean the same, they have been closely associated throughout much of history.²) Understanding the history of 'freedom of religion' is important, then, not only because it shows the value of this freedom over time and across cultures, but also because it reveals to us something of the grounds or justifications that have been provided for it.

2.1. Classical Approaches

An early example of what we today would call freedom of religion can be found in India, where a reference to it appears in an inscription of King Asoka or Piyadasi (304-232 BCE), who converted to Buddhism from Hinduism.

Beloved-of-the-Gods, King Piyadasi, does not value gifts and honors as much as he values this – that there should be growth in the essentials of all religions... By so doing, one's own religion benefits, and so do other religions, while doing otherwise harms one's own religion and the religions of others. Whoever praises his own religion, due to excessive devotion, and condemns others with the thought "Let me glorify my own religion," only harms his own religion.³

²The standard distinction is maintained as follows: 'freedom of religion' is a right and a moral claim that ought to be respected; 'religious toleration' suggests that certain religions are false or evil, that there is no right to engage in them, but that the civil authorities permit them in order to avoid greater evils or to ensure a greater good.

³*The 14 Rock Edicts*, # 12; see M. Searle Bates, *Religious Liberty: An Inquiry*, New York: International Missionary Council, 1945, 196.

We find other examples of such a liberty in classical Greece and Rome.

In Greece, commerce and trade with people from different regions of Europe, the Near East and northern Africa made clear the diversity of religious belief, practice, and worship – and, generally, these practices were simply accepted. St. Paul's speech to the philosophers in Athens on the Areopagus (as recounted in Acts 17:22-31) begins with his remarking on the presence of an altar on which were inscribed the words, "*To God the Unknown.*" The existence of a pantheon which included even an 'unknown god' is a clear indication of the acknowledgement by the Athenians not only of the existence of deities other than their own, but of the freedom to worship them.

In the time of the Roman Empire (31BCE-476), as well, local religious belief and practices were generally allowed, providing there was no challenge to imperial rule. Jewish communities, for example, were permitted to retain not only their forms of religious worship and practice, but were even provided with exemptions from certain civic obligations. This is, of course, not to say that there was no persecution of religious groups: Christians were harassed periodically from the time of Claudius, and persecuted particularly by The Roman emperors Nero (64), Decius (250-251), and Galerius (303). But there were also periods of toleration and, in 313, in their joint edict at Milan, Constantine and Licinius (the co-Emperor in the east) extended freedom of religion to all. The reasons given for this seem to have been twofold: that human beings owed devotion to their deity – so there should be no restriction of it, if it did not disrupt public order – and that it was a practice that "would be advantageous for the security and welfare of the empire;"⁴ Christians were often involved in charity work and care for the poor, from which the empire clearly benefited.

2.2. Early Christian Views

The Christian approach to freedom of religion has been, however, rather ambiguous. To be sure, from the beginning one finds Christian writers who defended a form of religious liberty. In a letter to Scapula, Proconsul of Africa, Tertullian (c.160-c.220) argued that neither law nor religion requires compulsion on matters of religion:

⁴*The Catholic Encyclopedia*, 1914 edition, s.v. "Constantine the Great," by Charles G. Herbermann and Georg Grupp.

... it is a fundamental human right, a privilege of nature, that every man should worship according to his own convictions: one man's religion neither harms nor helps another man. It is assuredly no part of religion to compel religion – to which free-will and not force should lead us...⁵

Other Christian writers, such as Lactantius (c.250-c.325) and Origen (185-254) presented arguments in favour of a religious freedom as well. What is suggested here is that one's religion is something that need not concern either the state or other religious groups, and that to compel or forbid religious belief and practice was both ineffective and disruptive of social order. (There is, admittedly, a hint in these texts that religious worship is a human right, but it was still some time before rights theories were articulated.) In this context, it is interesting to note a statement from *The Catholic Encyclopedia* of 1914: "Most probably oppression and persecution had made men realize that to have one's way of thinking, one's conception of the world and of life, dictated to him was a mischief-working compulsion."⁶

As Christianity developed and became more powerful in the west, there continued to be an acknowledgement by some that certain groups could be allowed to retain their non-Christian beliefs and to enjoy a measure of toleration. Thus, in 598, Pope Gregory the Great acknowledged that the Jews "had a claim to be treated equitably and justly. They were to be allowed to keep their own festivals and religious practices, and their rights of property, even in the case of their synagogues, were to be respected."⁷

Still, what such a claim or freedom meant, and what it amounted to, are not entirely clear. It was, it seems, a permission for members of a community to hold religious beliefs and to engage in worship, and a recognition that interference with this would be inappropriate or counterproductive. While freedom of religion was a freedom sought from the state, not from religious authorities, in most cases the precise difference between the two was not obvious. In early and mediaeval

⁵*Ad Scapulam*, Chapter ii, trans. S. Thelwall, <http://www.earlychristianwritings.com/text/tertullian05.html> [From the Christian Classics Electronic Library server, at Wheaton College; modified for the Tertullian Project, 6 July 2001].

⁶Herbertmann and Grupp, "Constantine the Great."

⁷See *The Catholic Encyclopedia*, 1914 edition, s.v. "History of Toleration," by Herbert Thurston.

Christendom, then, the 'justification' of religious freedom seems to have been largely practical. So long as there was no social disruption or corruption of those of the 'true faith,' the state could allow the presence of certain 'false faiths' and for their followers to practise these religions in private – and even in public – without interference. But there was no right to this 'freedom'; such religions were, at best, merely tolerated. (Later commentators distinguished, then, among 'practical civic tolerance' [which an individual may show to another out of charity], 'public political tolerance' [which the state shows towards various religious denominations on its territory], and 'theoretical dogmatic tolerance'; this latter, since it putatively calls into question whether there is any objective truth, Catholics could not admit.⁸)

In short, then, such a tolerance was not guaranteed; the justification of it was contingent, political and prudential. Moreover, there were limits to this toleration. Through the middle ages up to the counter Reformation, this toleration, when present, was generally extended only to those who were outside the Christian faith; heresy and apostasy from Catholicism (or, later, Christianity) were not immune from punishment.

2.3. Religious Freedom and Islam

Religious freedom or toleration was not a uniquely European phenomenon. Not only do we have the evidence of the Buddhist King Piyadasi, cited above, but we sometimes see a similar practice in the Islamic world. Throughout much of the Ottoman Empire (1299-1922), there was a broad – though, admittedly, not a universal – toleration of religious difference. Like Muslims, Christians and Jews were "People of the Book" (Arabic: *بائتكل لهما*; *ahl al-Kitâb*). While this did not mean that people of all faiths had equal opportunity in serving in government and in the civic administration – indeed, there was no assertion of equality of religions – the standard practice was that certain non-Muslim groups could enjoy cultural and religious freedoms so long as civic obligations were fulfilled and obedience to the political rulers observed. Persecution of

⁸*The Catholic Encyclopaedia*, 1914 edition, s.v. "Religious Toleration," J. Pohle.

difference was not normally acceptable.⁹ Moreover, throughout their Empire, the Ottomans allowed for the organisation of a "millet" arrangement (established in the fifteenth century, but not fully institutionalized until the nineteenth century), whereby the members of major religious communities – Greek Orthodox Christian, Jewish, and Armenian – could continue their worship as well as organise much of their day to day lives within the Ottoman political structure.¹⁰ These religiously-based millets had control over their own courts, schools, and social welfare, and "[m]embers of the millet even built roads, water fountains, and communal buildings for their own neighbourhoods."¹¹ In this way, the Ottoman government was able to maintain civil order while, at the same time, allow both local autonomy and religious practice.

The justification of this tolerance was, again, largely practical. It is true that Muslims were enjoined to respect other "People of the Book," but this treatment did not automatically extend to other religions. The Ottomans recognized, however, that so long as people could meet their religious obligations, many would be more willing to accept Ottoman rule. To restrict Christianity or Judaism as such was neither necessary for political stability nor likely to be successful. Yet, to speak here of a right – an individual right – to religious freedom or to religious conscience would still be an anachronism.

2.4. Uniformity and Tolerance in the Early Modern Period

One might think that the Reformation in Europe was an occasion for religious toleration and religious freedom, but in fact this was usually only indirectly the case. Under the first Act of Uniformity (so called) in England (1552, under the Anglican king Edward VI), people were required to attend religious services every Sunday and holy day. While this act was

⁹Aron Rodrigue, "Difference and Tolerance in the Ottoman Empire" (Interview by Nancy Reynolds), *Stanford Humanities Review* 5 (Fall 1995), 81-92; available also at <http://www.stanford.edu/group/SHR/5-1/text/rodrigue.html>.

¹⁰Charles A. Frazee, *Catholics and Sultans: The Church and the Ottoman Empire 1453-1923*, London: Cambridge University Press, 1983.

¹¹American Forum for Global Education, "Turkish Toleration," in *Spotlight on Turkey: Continuity and Change. An Interdisciplinary Curriculum*, ed. Linda Arkin, Hazel Sara Greenberg, and Abby Barasch, New York: American Forum for Global Education, 1992; see <http://www.globaled.org/nyworld/materials/ottoman/turkish.html>.

repealed by Edward's successor, the Catholic Queen Mary in 1553, another such act was promulgated by Elizabeth I, in 1559. While King Henry IV of France, a Protestant who converted to Catholicism, provided for some religious freedoms (such as liberty of conscience and public worship) for the Protestant Huguenots in the Edict of Nantes (13 April 1598),¹² his grandson Louis XIV gradually limited these freedoms, culminating in the Revocation of the Edict of Nantes, on 22 October 1685.

Nevertheless, religious tolerance and religious freedom gradually expanded in Europe through the sixteenth and seventeenth centuries. One way this was achieved was through acts of resistance, principally by members of the nobility, which forced rulers to accommodate divergent religious practices. (Such a freedom, however, meant only the allowability of belonging to another Christian denomination.) Grants of religious toleration were given in 1571, by Maximilian II, the Holy Roman emperor and King of Bohemia and of Hungary, to the Lutheran nobles and knights in Austria; by the Confederation of Warsaw (28 January 1573) to the nobles and peoples of Poland and Lithuania; and, in 1609, by Maximilian's son, Rudolf II, to the people of Bohemia (the present day Czech Republic) in the "Majestatsbrief." Such 'grants', however, were usually done under duress, i.e., in exchange for political and military support (as in the case of the Majestatsbrief), or to remove obstacles to national stability (as in the Warsaw document).

Another way of gaining religious freedom in the West was through emigration to 'the new world' and, in particular, to North America. Several communities were founded there to allow religious practice that had been restricted in England. Thus, we find, in 1636, the clergyman Roger Williams establishing the settlement of Providence (now in Rhode Island, USA) specifically as a place of religious toleration. According to Williams, "it is the will and command of God that (since the coming of his Son the Lord Jesus) a permission of the most paganish, Jewish, Turkish, or antichristian consciences and worships, be granted to all men in all nations and countries."¹³ In 1649, on April 21, the Maryland General Assembly,

¹²The French king Charles IX had signed an edict on religious tolerance, the *Édit de tolérance de Saint-Germain* (17 January 1562), but it was not formally ratified by the parliament.

¹³Sanford H. Cobb, *The Rise of Religious Liberty in America: A History*, New York: Macmillan, 1902, 13.

under Lord Baltimore, issued "An Act Concerning Religion," better known as the "Act of Toleration." The Act provided that "no person in this province professing to believe in Jesus Christ shall be in any ways troubled, molested, or discountenanced for his or her religion."¹⁴ Some communities – such as New Amsterdam (now called New York City) – strongly resisted extending religious freedom to members of other faiths, but even there a *de facto* religious toleration was extended to Jews within ten years of their arrival in the community, i.e., by the late 1650s.¹⁵ In 1680s, the 'Commonwealth of Pennsylvania' was established by the Quaker, William Penn (1644-1718). Among its founding principles was the following statement:

That all persons living in this province who confess and acknowledge the one almighty and eternal God to be the creator, upholder, and ruler of the world, and that hold themselves obliged in conscience to live peaceably and justly in civil society, shall in no ways be molested or prejudiced for their religious persuasion or practice in matters of faith and worship, nor shall they be compelled at any time to frequent or maintain any religious worship, place or ministry whatever.¹⁶

2.5. New Arguments and Justifications

By the early modern period in the West, then, the recognition of the importance of religious freedom had increased dramatically. One of the key figures here was John Locke (1632-1704). Of Puritan stock, Locke seems to have held broadly 'latitudinarian' views; certainly, in *The Reasonableness of Christianity* (1695), Locke argued for the importance of a rational defence of religion that contained only a rather limited range of key beliefs. In the *Fundamental Constitution of the Carolinas* (1 March 1669), articles 97 and 109ff. (written with Anthony Ashley Cooper, Earl of Shaftesbury), and in his *Letter on Toleration* (written in Latin in 1685-86 while in exile in Holland, and published anonymously in 1689), Locke

¹⁴*Archives of Maryland*, Baltimore, 1883, 1: 244-47; See <http://www.swarthmore.edu/SocSci/bdorsey1/41docs/56-mar.html>.

¹⁵Cyrus Adler, Max J. Kohler, Cyrus L. Sulzberger, and D. M. Hermalin, "New York," in *The Jewish Encyclopedia*, New York: Funk & Wagnalls Company, 1901-06; this resource is available online at www.jewishencyclopedia.com.

¹⁶*The Pennsylvania Code* (1682), Section 35. This code was drafted by Penn.

clearly defends some measure of religious toleration, though he did not wish it extended to include Catholics, Muslims, or atheists.¹⁷

Locke's arguments here are far reaching. For much of the prior history of "freedom of religion," what was advocated was usually either indifference or the toleration of error for the sake of a public good. Thus, as we have seen, the arguments for it were primarily practical – the recognition that there was a diversity of religions, and that attempting to eliminate the diversity was not necessary for (or might even impede) the efficient functioning of the state. The separation of church and state was not an established principle, and toleration was an act of charity or of prudence, so that the state could still officially discourage religious difference. By the time of Locke, however, we have some rather new justifications for religious freedom.

One key argument was based largely on Locke's epistemology – that human knowledge and reason are limited, that the capacity for error is present in human interpretation, and that belief itself is simply a relation of ideas that is "presumed" or "supposed" in the production of reasons, arguments, and proofs (*ECHU*, Bk. IV, xiv, 4).¹⁸ Admittedly, faith is "a settled and sure principle of assent and assurance, and leaves no manner of room for doubt or hesitation" (*ECHU*, Bk. IV, xvi, 14), for it has, as its source, God himself. But to know that an article of faith is a genuine revelation requires arguments from reason – and reason is not infallible. So (in matters of faith) we cannot be certain of many matters of putative dogma (seeing as they are either 'above reason' (*ECHU*, Bk. IV, xviii, 7) and therefore outside of human discernment, or about which there is a (wide) range of interpretations, with no key to help to settle the matter).

¹⁷"That Church can have no right to be tolerated by the magistrate which is constituted upon such a bottom that all those who enter into it do thereby *ipso facto* deliver themselves up to the protection and service of another prince." *A Letter Concerning Toleration*, trans. William Popple, London, Awnsham Churchill, 1689; see also *A Letter Concerning Toleration*, Latin and English texts revised and edited with variants and an introduction by Mario Montuori, The Hague: M. Nijhoff, 1963.

¹⁸See John Locke, *Essay Concerning Human Understanding*, in *The Works of John Locke in Nine Volumes*, 12th ed., London: Rivington, 1824, vol. 2. Locke also writes that, while people can control their beliefs by not engaging in this process, once "upon full Examination I find the most probable, I cannot deny my Assent to" that belief (see *Essay Concerning Human Understanding*, IV, xx, 16).

The best course of action is not to compel but to allow people to hold different views on a wide range of topics.

A second ground of religious freedom was related to the attempt to make sense of religious diversity. Here the argument was as much theological as philosophical. For some religious groups or movements, such as the Saumur Protestants (c.1608-1680), there were strong arguments to be made for religious pluralism, and, therefore, for tolerance. Though there was only one truth, given human nature, more than one interpretation of this truth was possible, and a person cannot know in advance which interpretation is the best. Moreover, having the truth was not necessarily limited to a particular religious denomination. There were many who had not heard the faith and, given the widely-shared belief that God wishes to save all of humanity, it was thought that there must, therefore, be different ways of coming to faith. For example, the Protestant reformer and visitor to Saumur, John Cameron, argued that faith was also available through a "covenant of nature," open to all.¹⁹

For some religious groups, the Protestant emphasis on a direct relationship between God and the believer undermined arguments for religious uniformity, and made each individual – and not the religious communities or the state – the authoritative interpreter of one's religious obligations. It followed, then, that there needed to be sufficient freedom to allow individuals to respond appropriately to these obligations. Another argument appealed to was that, because belief is not open to external constraint, and because force is useless as a means to have people adopt or change their religious views, there was simply no point to attempt to restrict basic freedom of religion or conscience.

But, perhaps, the decisive argument for freedom of religion was based on the claim that it was a 'natural' right. According to Locke, for example, individuals had rights that others must respect and that served as checks or limits even on public authority. There was an anthropological basis for this approach. Human beings were said to be motivated, not by an abstract notion of happiness, but by the objects of desire that varied according to the person concerned. Thus, rights to life and liberty came to extend to the right to pursue happiness in one's own way – which involved

¹⁹See Leslie Armour, "Philosophical Anthropology, the Saumur Philosophers, and Economic Rights," in *Philosophical Theory and the Universal Declaration of Human Rights*, ed. William Sweet, Ottawa: University of Ottawa Press, 2003, 57.

a right to be free from coercion and intimidation on matters of opinion or belief. Further, Locke recognized that human beings had a basic right to property and, to the extent that one has property in oneself, one has property in one's ideas. Consequently, just as one may dispose of one's physical property as one wishes, restricted only by the general principles of human reason and the requirements of social life, so one may 'dispose' of, i.e., hold, profess, and exercise, one's ideas with minimal restriction as well.

What this suggests is that it is as religion is seen to be more and more a matter of private interpretation and conviction and not within the sphere of knowledge, and as individuals are seen to have proprietorship over themselves, laws concerning religion cannot and should not be enforced. While it would still be some time before many of the laws in Europe would allow a broad religious freedom, it is as we distinguish between the 'public sphere' and a 'private sphere' – where we recognize not only human diversity but the importance of human beings to determine their own good or happiness – that calls for a right to freedom of religion and freedom of conscience become more acute.

2.6. Establishing Religious Freedom

In part because of Locke's influence, England abandoned attempts to ensure 'uniformity' in religion; in fact, in the Act of Toleration of 1689 (May 24), the English Parliament granted freedom of worship to Nonconformists (i.e., 'dissenting' Protestants). The Lockean arguments for religious freedom also later came to influence the governments of some of Britain's former colonies in the Americas. *The Virginia Statute for Religious Freedom*, written in 1779 by Thomas Jefferson, proclaimed:

"[N]o man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burdened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities."²⁰

²⁰<http://religiousfreedom.lib.virginia.edu/sacred/vaact.html>. See also W. W. Hening ed., *Statutes at Large of Virginia*, 12 (1823), 84-86.

Similarly, in 1791, in the Bill of Rights of the United States (i.e., in the first 10 amendments to the American Constitution), we read that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."²¹ The freedom was markedly greater than that which existed in many of the early American colonies, for here there was not only a freedom from restriction and compulsion, but also a freedom to act, and it was a freedom that extended not only to all Christians, but to all human beings.

Britain slowly followed France and the United States. In 1829 (April 13), the British Parliament passed the Roman Catholic Relief Act (10 George IV, c. 7), which removed the disqualification of Catholics from high public office in Britain. While the arguments for religious freedom that had inspired these reforms were often derived from Locke and his contemporaries, they had other sources as well. By mid-century, John Stuart Mill, although no great friend of religion, provided yet another reason for affirming liberty of religious belief, and that is that, by the extension of such liberties, humanity is a greater gainer.²²

The interest in securing general religious freedom was not obviously shared by all. In 1864, Pope Pius IX promulgated the "Syllabus of Errors" in which we find condemned as an error the belief that "[e]very man is free to embrace and profess that religion which, guided by the light of reason, he shall consider true."²³ A similar view was reiterated by Pius' successor, Leo XIII, in 1885: "The gravest obligation requires the acceptance and practice, not of the religion which one may choose, but of that which God prescribes and which is known by certain and indubitable marks to be the only true one."²⁴

²¹A roughly comparable view appears in Article X of the French *Declaration of the Rights of Man and the Citizen* (1789): "No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law."

²²Mill, *On Liberty*, Ch. 1: "Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest."

²³Syllabus of Errors # 15, see <http://www.ewtn.com/library/PAPALDOC/P9SYLL.HTM>; the document refers the reader to Pius IX's allocution "*Maxima quidem*" (9 June 1862) and Damnatio "*Multiplices inter*" (10 June 1851)

²⁴Leo XIII, Encyclical "*Immortale Dei*" (1 November 1885); see H. Denzinger, *Enchiridion Symbolorum*, 9th ed., Freiburg, 1900, n. 1701.

Nevertheless, to these papal pronouncements even many Catholic leaders, such as John Henry Cardinal Newman, expressed caution. Newman emphasized that the theses of the Syllabus of Errors should not be understood on their own, and that each 'condemnation' needed to be read by looking specifically at the context in which (and in opposition to what) the statement was originally made. In any event, it is important to note that such papal statements were restrictions of 'freedoms to' (e.g., to act in a certain way), but not of 'freedoms from' (e.g., coercion). So, even here one might argue that there was no question of individuals being coerced to come to the Christian or Catholic faith. Thus, even such apparent challenges to religious freedom were not as strong as many had feared.²⁵

2.7. The Twentieth Century

By the 1940s in the western world, freedom of religion was broadly acknowledged as a basic right. Seeing the attacks on and the restriction of fundamental freedoms by fascism and communism, the American President Franklin D. Roosevelt, in his State of the Union address to the United States Congress (6 January 1941), listed, among four basic human rights, "freedom of worship." Similarly, in his *Les droits de l'homme et la loi naturelle* (1942), Jacques Maritain writes of one's "freedom of conscience" as "a natural, inviolable right" "with respect to the state" – and he refers with approval to Roosevelt's mention of freedom of worship.²⁶ Maritain adds that one has a "right to the pursuit of eternal life along the path which conscience has recognized as the path indicated by God," and declares the "right of the Church and other religious families to the free exercise of their spiritual activity."²⁷

Drawing on these and other calls for freedom and basic rights, in 1948, the United Nations formally adopted a resolution proclaiming the

²⁵See John Henry Newman, *A Letter Addressed to the Duke of Norfolk on Occasion of Mr. Gladstone's Recent Expostulation: Certain Difficulties Felt by Anglicans in Catholic Teaching* (1874), New York: Longmans, Green, and Co., 1900, vol. 2. See <http://www.newmanreader.org/works/anglicans/volume2/gladstone/section7.html>.

²⁶See Jacques Maritain, *Natural Law: Reflections on Theory and Practice*, ed. William Sweet, South Bend, IN: St Augustine's, 2001, 79.

²⁷Maritain, *Natural Law*, 97.

Universal Declaration of Human Rights. Among these rights, one finds that

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. (Article 18)

Further, the next Article continues:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. (Article 19)

Freedom of religion, then, was seen clearly to entail both a freedom to believe and a freedom to act.

Here, we find no justification for these rights based on contingent factors, such as the stability of the social order. Instead, the basis for these and other rights was that there was an inherent dignity and worth of the human person. Such rights were fundamental, and applied equally to men and women. The 'recognition' of this dignity and these rights was, the Declaration affirmed, necessary to "social progress and better standards of life," to "the free and full development of [one's] personality," and to "freedom, justice and peace in the world." But this dignity and these rights did not depend on any of these results for their existence.

In the succeeding decades, freedom of religion has been reaffirmed as one of the most fundamental of all human rights. Members of the United Nations must subscribe not only to the Universal Declaration, but to successive documents, such as the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief* of 1981²⁸ and the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* of 1992. All states, then, are called on to recognize freedom of religion as a basic right – and even those regimes which in practice fail to do so, nevertheless often protest that they really do.

Many religious denominations recognise this freedom as well. At the First Assembly of the World Council of Churches in Amsterdam in August

²⁸General Assembly Resolution 36/55 of 25 November 1981; for the text of this document, see <http://www.ohchr.org/english/law/religion.htm>.

1948, the Council published its *Declaration on Religious Liberty*: "The rights of religious freedom herein declared shall be recognized and observed for all persons without distinctions as to race, colour, sex, language, or religion." Later, in 1965, Pope Paul VI published the Declaration *Dignitatis humanae*, which asserted that

the human person has a right to religious freedom ... [and] that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others within due limits.

The foundation of religious freedom, Paul VI pointed out, is "the very dignity of the human person" and "is to be recognized in the constitutional law whereby society is governed and thus it is to become a civil right."

Like the Universal Declaration of Human Rights and its successor documents, *Dignitatis humanae* and the declarations of other religious bodies affirm a freedom of religion that is not a toleration of a difference or of an evil, or is a contingent, practical compromise, but something that is itself a fundamental right. Yet, when we look at events today, this freedom is consistently challenged, restricted, and denied. In response, then, it is still necessary to ask whether and how such a freedom can be defended and whether it can be actualized in the contemporary world. This requires addressing a number of conceptual issues.

3. Conceptual Issues

The preceding historical sketch shows clearly the importance of the notion of freedom of religion over time and across cultures. It also provides some of the principal reasons or arguments that have been given for it. These reasons have developed and changed, but we can say that they are cumulative rather than contradictory. As we have seen, they are essentially threefold: first, that freedom of religion is an inalienable right of human beings that is essential to their dignity as persons; second, that because assured knowledge on religious issues is so limited, toleration of diversity is required; third, that if we wish to assure a stable civil society – something which is a basic common good – a separation of civil and ecclesiastical authorities and a toleration of religious diversity and practice are necessary.

The failure or neglect of respecting such a basic freedom today has rarely been based on its outright rejection. Rather, this freedom is challenged because of alleged problems, e.g., in determining to what or to whom such a freedom applies, how such a freedom is to be defined, what it includes, what its source is, and what its limits are. These are, admittedly, primarily conceptual issues, and it is here that the authors in this issue of the *Journal of Dharma* provide both analysis and direction.

3.1. Defining Religion

If freedom of religion is to be extended to all who profess a religion, and even who wish to be free of it, then, an obvious question is: 'What is religion?' Unfortunately, however, it is difficult today to give a precise answer to this question. According to a recent news report, some 10,000 religions have been identified, and there are two new religions in the world each day.²⁹ The difficulties in constructing a clear definition pose a particular problem when it comes to the law. In countries in which freedom of religion is an established right, the law must not only protect this freedom, but must extend its benefits to all who legitimately claim it. These benefits may include exemption from military service or certain civic responsibilities, exemption from certain taxes, the provision of opportunities to engage in worship, the right to wear religious symbols in the workplace, and so on. To provide this, the state and the law clearly need to have some criteria for what counts as a religion.

One option is simply to leave it to the courts to determine whether a practice is a religion, or whether a particular individual or group who claims to adhere to a religion should be permitted the benefits provided by the law. Yet, there is the fear that neither the law nor the state is qualified to decide whether a religious belief is genuine, and that, as it may be in the

²⁹"Bad Moon on the Rise," *National Post* (Canada), 20 July 2004. The author writes: "Nearly 10,000 religions have been identified worldwide. Sociologists estimate new ones spring up at the rate of two per day. The majority of governments in Canada – federal and provincial – list upwards of 60 as protected creeds, from Christianity, Judaism and Islam, through Buddhism, native spiritualism, Sikhism and Unitarian-Universalism. Even Neo-Paganism and Wicca are protected in most provinces. Ontario goes so far as to safeguard 'non-deistic bodies of faith' provided the 'beliefs and practices' they maintain 'are sincerely held and/or observed'." Retrieved July 2004, from <http://www.canada.com/national/nationalpost/news/comment/story.html?id=b990cbe4-0284-4fbc-a062-7621b49a7961>.

interest of certain governments to severely restrict accommodation of religious belief, the state is not a neutral party here. Still, it is evident that the law needs at least a 'working conception' of religion that can be used in its dealings with those who appeal to this freedom. Without a definition of some kind, how can the law be called on to ensure even basic respect of freedom of religion?

One landmark case (which has had repercussions throughout the English-speaking world), was the 1944 US Supreme Court decision on *United States vs. Ballard*. Guy Ballard was a founder of the "I AM" movement, and claimed that he was empowered by a divine messenger to perform healings. He used the postal service to solicit donations to his cause and, as a result, was accused by the US government of mail fraud. Although the government argued that Ballard knew very well that his claims to be able to heal were false and that his religious beliefs were not serious, the defence – Ballard having passed away in 1938 – replied that the government had no right to judge the truth or falsity of one's beliefs or of one's religion. The Supreme Court, in its ruling, agreed, affirming that juries could not judge the content of one's religious beliefs or whether they made any sense, but only whether these beliefs were held sincerely.³⁰ In other words, this decision excluded challenging an appeal to freedom of religion by calling into question the content of that religion. The relevance of this decision to the claims of new religious movements is clear.

The practice in many 'common law' countries has been, then, not to define specifically what a religion is, but simply to consider whether an individual, group, or organization meets the same broad criteria that established religious groups satisfy. Perhaps for many of the same reasons given in jurisprudence in the United States, the tendency is to refrain from saying much, if anything, concerning the content of the belief.

³⁰For the majority, Justice William O. Douglas wrote: "Freedom of thought, which includes freedom of religious belief, is basic to the society of free men. It embraces the right to maintain theories of life and death of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law." *UNITED STATES vs. BALLARD*, 322 U.S. 78 (1944); see <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=322&invol=78>.

Defining religion, then, remains a challenge; and even if the law may employ an inductive approach for determining what legally counts as a religion, this still gives rather little guidance about what it is.³¹ There is a further implication that, on this view, religion is not open to any objective assessment, its claims are determined not to be matters of fact, and it is, at best, private opinion. One may well wonder, then, how we can identify those beliefs or practices that are supposed to be protected by freedom of religion.

3.2. Defining Freedom of Religion

There is a second conceptual issue that is often raised in debates about freedom of religion: What exactly does freedom of religion involve? What does it entitle one to do? Does it extend to being able to express what some might regard as heresy and apostasy? As we have seen, the Universal Declaration of Human Rights states that freedom of religion includes the freedom "to manifest his religion or belief in teaching, practice, worship and observance" and "freedom to change his religion or belief," and some say that it also includes a freedom *from* religion. Moreover, this freedom is closely connected with "the right to freedom of opinion and expression." But is freedom of religion distinct from these other freedoms? If so, what is it about freedom of religion that goes beyond them?

In "Jacques Maritain and Freedom of Conscience," William Sweet presents a series of arguments from the contemporary Catholic tradition concerning the nature, source, and limits of freedom of religion. He begins with the claim that freedom of religion is distinctive, specifically that it is not assimilable to freedom of opinion, belief, or expression. This freedom is, moreover, central to human dignity. Yet, Sweet points out that it may not be absolute. Those within a religious tradition may well have certain overriding obligations on their freedom to exercise and express – and it is important to note that such a restriction is not peculiarly religious. Article 29 of the Universal Declaration asserts that there are correlative "duties to the community" and that "In the exercise of [one's] rights and freedoms"

³¹In the United States, for example, there is an ongoing debate whether even "secular humanism" would count as a "religion." See "Is 'Secular Humanism' a 'Religion'?" http://members.aol.com/patriarchy/definitions/humanism_religion.htm and "Secular Humanism in U. S. Supreme Court Cases," <http://members.tripod.com/%7Ecandst/sec-hum3.htm>.

one may be "subject ... to such limitations as are determined by law ... for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." Thus, even if freedom of religion is a fundamental freedom, there can be limits on it (for example, limitations posed by the common good) – although these limits would undoubtedly be relatively few and rare.

In "Religious Freedom," Warayuth Sriwarakuel points out that 'religious freedom' can be understood in two senses: as a right (i.e., as a freedom from compulsion, with corresponding claims on others), and as a state of mind. Sriwarakuel argues that the right to religious freedom follows from the fact of the plurality of religions in the world. Nevertheless, he also holds that, while such a freedom from external constraint is important, we must also recognize what this freedom is a 'freedom to', specifically, to achieve a state of mind based on self-negation and the logic of non-attachment.

If the arguments of Sweet and Sriwarakuel are correct, freedom of religion goes far beyond a freedom of thought or opinion because it involves the possibility of committing oneself to a way of life – and, so, engages all of one's moral personality. This, in turn, suggests that the foundation or basis of such a freedom cannot merely be a matter of seeking to ensure social stability or abstaining from involvement in matters concerning which there can be no sure knowledge.

3.3. Bases for Freedom of Religion

A third issue that needs to be addressed in discussions of freedom of religion, then, is What is the basis for such a freedom? As we have seen above, a number of different justifications have been given in the past. But are there any which hold in our increasingly secular, post-modern world?

Robert Delfino ("The Problem of Justifying the Right to Freedom of Religion") argues that, in light of the continued existence of religious persecution in the world, it is important to be able to provide an argument or grounding for freedom of religion as a natural right. Two arguments, he maintains, are particularly useful here: that of Jacques Maritain, which is rooted in an account of a transcendentally-grounded human natural law, and that of Alan Gewirth, which is based on a "principle of generic consistency." According to Delfino, on either view, the existence of natural human rights, including a right to freedom of religion, can be

defended, but Gewirth's position proves to be especially helpful in a contemporary secular environment.

In "Religious Pluralism and Freedom of Religion," Jove Jim Aguas argues that religious freedom is not only firmly established in the Universal Declaration and in *Dignitatis humanae*, but also required by the fact of religious diversity. For Aguas, the major world religions express different perceptions of the same ultimate reality. Since human beings are creatures of inherent value, and since they are also fundamentally religious beings, they not only have a moral claim to practice their religion, but other individuals have an obligation to respect this. This respect is, in turn, a basis for dialogue.

Bambang Sugiharto ("The Right to Religion") argues that freedom of religion is a human right, that human rights are themselves based on religion, and that religion has often been a defender of human rights. But while religious freedom is a human right, what it means for something to be a human right is more than what is understood in the classical European tradition. Sugiharto emphasizes that human rights must respond to religion – specifically, to the underlying insight of religion concerning what it means to be human – and that this is essential to seeing what a right to religious freedom concretely involves.

The arguments of Delfino, Sugiharto, and Aguas clearly go some way in showing how the freedom of religion is a right, and in explaining why this freedom must be defended. There may, of course, be other justifications as well. For the freedom of religion, it might be argued, is more than a (subjective) individual right. It may be a group right, and it may be defended in terms of its contribution towards a common good. We have, then, a wide range of philosophical or theological arguments for such a basic freedom. But the practical success of any of these defences hinges on a further matter – that is, on whom the claim of this freedom can be made, and who it is that must guarantee its respect. The most obvious candidate is the state.

3.4. Freedom of Religion and the State

How, then, does freedom of religion relate to law and the state? What is the force of such a right? Must such a freedom inevitably yield to the law and the state? What kind of a state would be needed to ensure that this freedom is adequately respected?

Contrary to first appearance, perhaps, these questions are not particularly speculative or abstract. Their practical import is evident from the experience of the limitations and violations of religious freedom in modern times. Many such violations occurred in the so-called "people's republics" of the 20th century, and we continue to find examples today. One well-known recent case is that of Abdul Rahman Jawed, a citizen of the Islamic Republic of Afghanistan. Rahman converted to Christianity in 1990 while in Pakistan, but – after some years living in Europe – was deported back to his home country. During a custody battle for his children following his divorce, his relatives reported to the police that Rahman was an unfit father because he was a convert to Christianity. Article 7 of Afghanistan's constitution commits the country to respect for the Universal Declaration of Human Rights, including, therefore, the "freedom to change [one's] religion or belief." But Article 3 of that same constitution says that Islamic law is fundamental in the country – and, accordingly, anyone who abandons Islam is guilty of a crime for which the punishment is execution. This case is not unique. Conversion from Islam is regarded as a capital offence by many in Islamic countries. In Iran, members of the Baha'i faith, who are considered by Iranian officials to be apostates from Islam, have been declared criminals, and have suffered harassment, persecution, long-term detention, and even death.

Change of belief is not the only issue where states and laws have come into conflict with the claim of freedom of religion. The Universal Declaration states that one's "freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." But consider the widely-publicized struggle between the government of China and the Falun Gong (or Falun Dafa) movement. Falun Gong draws on elements from Buddhism and Daoism, and emphasizes physical and moral exercise and development. In July 1999, however, the movement was accused by the Chinese government of "spreading fallacies, hoodwinking people, inciting and creating disturbances and jeopardizing social stability," and was outlawed. Since then, the group states, tens of thousands of its practitioners have been detained, arrested, or sent to prison, and there are

some 40 documented cases of practitioners being beaten up and tortured to death.³²

Other instances where freedom of religion continues to be under threat are legion. The U.S. Commission on International Religious Freedom has identified 11 nations as "countries of particular concern" for violations of religious freedoms: Burma, North Korea, Eritrea, Iran, China, Saudi Arabia, Sudan, Vietnam, Pakistan, Turkmenistan, and Uzbekistan. Religious proselytism and conversion are forbidden or restricted in several other nations, and the exercise of religion in countries where there is a dominant or state religion is often subjected to limitations of various degrees.

One might well ask, then, what is required for freedom of religion to exist in any meaningful sense in such countries? How should the relation between religion and the state be conceived in order to ensure a genuine respect for freedom of religion?

Stephen Schneck ("Religion and the American Framing") examines the issue of religion and its relation to the state in the United States, by reviewing the debates among the American "Founding Fathers" in the late eighteenth century. One finds, Schneck points out, four broad models of what such a relation could be. Extreme views – for example, of religion controlling the state or of the state being entirely free of religion – were held by very few. Instead, Schneck notes, the majority of the Founding Fathers opted for other models in which religion, and a more robust freedom of religion, has a place in the public sphere. So, readers may discover that, in turning to one of these models, not only Americans but all those interested in protecting freedom of religion can see how a genuine recognition of this freedom might be possible today.

In "The Non-Discriminatory State: Toward a Model of Church-State Relationship and Freedom of Religion in Nigeria," Pantaleon Iroegbu discusses freedom of religion in much the same way, though drawing specifically on the African experience. Given the strong place of religion in African traditions, there is, Iroegbu notes, no call for an "absolutely secular" or totally neutral state, i.e., where the state has nothing at all to do

³²The Chinese government has gone to extraordinary lengths in its opposition to Falun Gong. In January 2006, as part of an agreement to allow the Google search engine to operate in China, the company agreed to allow the filtering of a long list of "bad words," including non-Chinese sites related to "Falun Gong."

with religion. Nevertheless, to guarantee a substantive religious freedom, and also to allow for the freedom of those who do not embrace religion, Iroegbu argues for a "non-discriminatory state."

Schneck and Iroegbu would maintain, then, that for there to be an effective right to freedom of religion, and for such freedom to be genuinely secure within the state, we require a state that allows the presence of religion and religious belief in the public sphere, that is open to cooperation with religious groups, and yet that also remains formally separate from religion. While we can see what kinds of arrangements need to be in place for this freedom to exist, we also recognize that there is an enormous practical challenge, that is, how to bring about such a state and how to ensure that good relations between the state and religion are maintained.

3.5. Freedom of Religion and Education

Another way in which freedom of religion has been challenged comes, interestingly, from religious communities themselves, and we see this particularly when it comes to matters of education about religion.

It is often held today that the purpose of education is to seek the truth, although this does not presuppose that one already has it. In most fields of study, knowledge and truth are things to be sought, and such a search is ongoing. Some, however, insist that, in religion, knowledge and truth are already possessed; religious education is not a search for new knowledge but, rather, the transmission of an established knowledge. They would, therefore, argue that 'secular' education is inferior and should yield to the religious.

An example of such a tension between religion and a secular model of education is found where religious communities insist on educating their children by themselves, or by refusing to follow a state curriculum. In a famous 1972 United States Supreme Court case, the defendants, who were members of the Amish faith, came into conflict with the state of Wisconsin. The Amish parents refused to send their children, aged 14 and 15, to public school after the children had completed the eighth grade. They claimed that the US Constitution's guarantee of freedom of religion "protects a community's right to live in accordance with its tradition and

beliefs, even if this limits the individual freedom of children.”³³ On the other hand, the state argued that the freedom of religion does not extend so far as to deprive children of certain benefits, such as an education provided by the state.³⁴

There are, indeed, many other instances of conflict concerning religion and the purpose and content of education. In “Reconciling the Madrassah with the School: Freedom of Religion, Education, and the Dilemma of Contemporary Muslims,” Ghazala Irfan looks at the case of the Madrassah – the Islamic school attached to a mosque – and raises the issue of whether freedom, and particularly religious freedom, exists within the confines of such an institution. Irfan notes, first, that there may be a tension between education (conceived as an activity that is open to challenging established truths) and educational institutions that affirm a text as true. More importantly, there may also be a tension within the religious community itself, i.e., between those who control the madrassahs (and the methods and ways in which the Qur’an is studied) and other Muslims. Irfan’s study suggests an even further question: Can any religious authority permit, and should we expect such an authority to permit, a substantial freedom of religion that may challenge that authority? Yet, if religious groups make claims to religious freedom, surely they have to respect it themselves.

The preceding issues – on the definition of religion, on the nature, source, and limits of religious freedom, on the justification of this freedom, on the role of the state, and on the place of this freedom within religious communities – are clearly conceptual matters. As these issues are clarified and addressed, however, it becomes more obvious what freedom of religion amounts to, how it can be defended and, by extension, what needs to be done in order for it to be actualized in the contemporary world. Thus, following the analyses and the directions suggested by the authors in this volume, if we can respond to the problems alleged concerning freedom of religion, the practical opposition to this freedom will be increasingly difficult to sustain.

³³people.brandeis.edu/~teuber/justicepaptop3.html; see *Wisconsin V. Yoder Et Al.*, No. 70-110 Supreme Court of the United States - 406 U.S. 205; 92 S. Ct. 1526; 32 L. Ed. 2d 15; 1972 U.S. LEXIS 144 - December 8, 1971, Argued - May 15, 1972, Decided. See <http://people.brandeis.edu/~teuber/yoder.html>.

³⁴The Supreme Court upheld the Amish claim.

Of course, there are differences among the positions presented in this volume. But equipped with the insights and analyses of their authors, and with a clearer sense of the arguments that have been employed over two millennia, we know better what values and principles are presupposed, what additional arguments need to be given, and which directions in research need to be pursued. All these are essential to the key concern of how freedom of religion can be guaranteed or respected in the increasingly pluralistic and multi-confessional countries of today.

4. Conclusion

The authors in this issue of the *Journal of Dharma*, then, introduce and contribute to the discussion of a number of the central issues involved in understanding freedom of religion today. We are provided with some philosophical justifications of such a freedom, we see some of the risks and potential limitations of this freedom, and we have a better sense concerning what conditions are required for this freedom to be guaranteed or respected, both in the state and in religious communities.

The call for religious freedom is, it is important to remember, not a new one. Though initially it appeared as a plea for toleration, today freedom of religion is generally accepted as a basic human right. Indeed, what is consistent throughout the essays in this volume is the recognition that freedom of religion is fundamental because of its relation to human dignity. This freedom, then, is not something that lies at the disposition of any public or religious authority. It is essential to the very being and identity of the human person.

We are reminded by the authors that such a freedom is part of the public sphere, and that this includes a freedom of expression. For if human beings have dignity and have a right to preserve their identity and integrity, then rights not only to hold but to express their faith are clearly fundamental. Nevertheless, more needs to be said concerning how such beliefs have a place in the public sphere.

The authors in this volume also remind us that such a freedom is not obviously absolute. For while all accept that there is no justification to coerce people to believe, the freedom to act on one's belief or conscience – to express, worship, and so on – may well be limited, if only by duties to others. But, again, what exactly these limits are, and under what conditions their limitations can be imposed, are issues that require further consideration.

Freedom of religion is clearly one of the most basic rights of human beings, for it is rooted in the nature of what they are. It is, perhaps, for this reason that the challenges to this freedom have also been often regarded as violations of what it is to be a human person. This issue of the *Journal of Dharma*, then, serves to indicate and to provide direction on some of the major concerns that philosophers and other scholars have had to address and need to readdress if this freedom is to withstand the many contemporary attacks on it.

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JACQUES MARITAIN AND FREEDOM OF CONSCIENCE

William Sweet♦

1. Introduction

The Universal Declaration of Human Rights, promulgated by the United Nations on December 10, 1948, is one of the key documents in the history of freedom of religion and freedom of conscience. It was the product of intensive work by an international committee of diplomats and public figures (including René Cassin, John Humphrey, Eleanor Roosevelt, Chang Peng-chun, and Charles Habib Malik),¹ but among those who not only defended it but inspired it was Jacques Maritain. Beginning in the mid-1930s, Maritain was the author of a number of books, lectures, and essays on the nature of political community, the dignity of the human person, and the centrality of human rights and freedoms.

Among the most fundamental of these rights was 'freedom of conscience' – a freedom "that cannot be tampered with by the state," and that was ascribed to persons simply so far as they are persons. This emphasis is not surprising given Maritain's 'personalism'. Yet, Maritain recognized that human beings were also essentially social beings, that they lived in communities and states, and that they had duties to them.

This raises, however, some important questions. What are we to do when the individual right to conscience and the demands of the community (seem to) conflict? If freedom of conscience – and, indeed, all basic freedoms – cannot be "tampered with" or limited by the state, can they be limited at all? These are matters that concerned Maritain, though his views here are not always fully spelled out.

To help address these issues, in the first part of this paper, I want to present Maritain's views on freedom of conscience and on one's obligations to the community. In the second section, I want to raise the

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¹See Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Creation of the Universal Declaration of Human Rights*, New York: Knopf, 2000.

questions: 'What is the source of this freedom?' and 'Why does Maritain rank freedom of conscience where he does?' In the third section, I want to discuss not only what Maritain would see as the limits imposed by freedom of conscience, restrictions on what an institution (such as the community or the state) may do in carrying out its responsibilities, but also whether this freedom itself can be limited. I will make some suggestions on how Maritain can justify limiting such freedom, as it would be instructive for debates both within contemporary political communities and within the Catholic Church.

2. Freedom of Conscience and Obligations to Community

Maritain counts freedom of conscience among the most fundamental rights of the human person; it is "the first of these rights,"² or, perhaps more precisely, it follows immediately after the right to existence. It is a right that is central to charters or bills of rights throughout the world, i.e., documents that constitute the constitutional foundation of many states and international organizations. The "right to freedom of thought, conscience and religion" is, for example, proclaimed in Article 18 of the Universal Declaration of Human Rights. It is implied in the First Amendment to the United States Constitution (and appears explicitly in various drafts of that amendment).³ It is the first of the "fundamental freedoms" articulated in

²William Sweet ed., *Natural Law: reflections on theory and practice*, South Bend, IN: St Augustine's Press, 2001; henceforth abbreviated as *Natural Law*; this volume reprints material from Maritain, *The Rights of Man and Natural Law*, New York: Scribner's, 1943, 79. See also Pope John Paul II, *Message for the XXIV World Day of Peace: "If You Want Peace, Respect the Conscience of Every Person"* (1 January 1991): "rather, [freedom of conscience] is the most fundamental, since the dignity of every person has its first source in his essential relationship with God the Creator and Father, in whose image and likeness he was created, since he is endowed with intelligence and freedom." (See http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_08121990_xxiv-world-day-for-peace_en.html)

³See, for example, the drafts by James Madison (7 June 1789) affirmed: "The Civil Rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, nor on any pretext infringed. No state shall violate the equal rights of conscience or the freedom of the press, or the trial by jury in criminal cases." The House Select Committee, (28 July 1789) stated: "No religion shall be established by law, nor shall the equal rights of conscience be infringed." Samuel Livermore (15 August 1789) wrote: "Congress shall make no laws touching religion,

Section 2 of the *Canadian Charter of Rights and Freedoms* (1982).⁴ It is akin to the second of Franklin Roosevelt's "Four Points."⁵ It has been repeatedly referred to in the preceding century by the Catholic Church, in documents of the Vatican Council II, and particularly in the writings of the late Pope John Paul II.⁶ It is a freedom that is signalled elsewhere, as well.

What does Maritain mean by 'freedom of conscience'? Maritain explains that it is "the right of conscience to hearken unto God, and to make its way to Him."⁷ He also describes it as the right "of the human person to make its way towards its eternal destiny along the path which its conscience has recognized as the path indicated by God."⁸ More specifically, it is "the right to personal freedom or to conduct one's own

or infringing the rights of conscience." The final House version (20 August 1789) read: "Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience." See B. A. Robinson, "The First Amendment to the U.S. Constitution: Religious Aspects," 2002, at: http://www.religioustolerance.org/amend_1.htm.

⁴Among the fundamental freedoms of the Canadian Charter are "(a) freedom of conscience and religion" and "(b) freedom of thought, belief, opinion and expression." See *Canadian Charter of Rights and Freedoms* at <http://lois.justice.gc.ca/en/charter/index.html>.

⁵These "four essential human freedoms" were articulated by President Franklin D. Roosevelt in his Annual Message to the United States Congress, on 6 January 1941. They are: "(1) Freedom of speech and expression everywhere in the world. (2) Freedom of every person to worship God in his own way everywhere in the world. (3) Freedom from want which, translated into world terms, means economic understanding which will secure to every nation a healthy peace-time life for its inhabitants everywhere in the world. (4) Freedom from fear which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of aggression against any neighbour anywhere." See Maritain, *The Rights of Man and Natural Law*, New York: Scribner's, 1943, 72, note 1.

⁶For example, in the papal messages on 1 September 1980 ("The Freedom of Conscience and of Religion" [http://www.vatican.va/holy_father/john_paul_ii/messages/pont_messages/1980/documents/hf_jp-ii_mes_19800901_helsinki-act_en.html]), and for the celebration of the World Days of Peace, 1 January 1991 ("For the XXIV World Day of Peace: 'If You Want Peace, Respect the Conscience of Every Person'") and in 1998 ("Religious Freedom: Condition for Peace" [http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_19871208_xxi-world-day-for-peace_en.html])).

⁷Maritain, *Natural Law*, 76.

⁸Maritain, *Natural Law*, 79.

life as master of oneself and of one's acts, responsible for them before God and the law of the community; the right to the pursuit of the perfection of moral and rational human life; the right to the pursuit of eternal good (without this pursuit there is no true pursuit of happiness)."⁹ In general, we may see it as "the right freely to believe the truth recognized by one's conscience."¹⁰

Now, for Maritain, this freedom is not the same as freedom of thought or of opinion. The distinction may seem to be a fine one, but it is not an insignificant one. Freedom of conscience is not just a freedom to think or consider, but more like a freedom to commit oneself to a way of life, and it presumes that one is seeking the truth (e.g., how to lead one's life) and not just pursuing some other purpose (e.g., avoiding military service). It is also not a freedom of opinion or belief; it is a particular kind of belief that it defends, one that has a special place in a person's life.

3. Source and Ranking of Freedom of Conscience

What is the source of this freedom? Broadly speaking, for Maritain, the source is "the conception of man and of natural law established by centuries of Christian philosophy,"¹¹ though we should note that the reference to "centuries of Christian philosophy" pertains only to how we have come to know what the source is; it is not the source itself. For Maritain, this freedom is rooted in the value human beings have as persons – as beings of dignity. But there is more involved here than this. For, though Maritain does not say this explicitly, he appears to hold that freedom of conscience has a distinctive moral weight because of something about conscience itself. To understand this, something must be said about conscience, particularly because of the possible misunderstanding concerning what it is.

In contemporary standard usage, 'conscience' means "the feeling or sense that one's conduct or intentions are inconsistent or consistent with what one feels to be right or be good." Similarly, the *Runes Dictionary of Philosophy* defines 'conscience' as "Any emotionally-toned experience in which a tendency to act is inhibited by a recognition, socially conditioned, that suffering evil consequences is likely to result from acting on the

⁹Maritain, *Natural Law*, 77-78; see also 97.

¹⁰Maritain, *Man and the State*, Chicago: University of Chicago Press, 1951, 150.

¹¹Maritain, *Natural Law*, 79.

impulse to act."¹² Some see conscience, then, as "no more than the result of social pressures or customary rules of society which have become a part of our mental habits," and that "the fundamental sense of moral obligation can be explained by social pressure and collective perceptions."¹³

But this is *not* the sense in which Maritain would understand it. For Maritain sees 'conscience' as a characteristic of the practical intellect "inasmuch as it considers right and wrong in conduct."¹⁴ Specifically, one's (practical) reason issues a judgement of conscience: "The judgement of conscience is a speculative-practical judgement."¹⁵ But for the practical reason to arrive at such a judgment, the natural law must be present: the "Natural Law has to be interiorized [or internalized], in order for my practical reason to exercise its function of measuring my will and my acts."¹⁶ So it is clear that 'conscience' (as noted above) is not just 'thought' or 'opinion', but involves making a determination about how to act in accordance with an objective moral principle.

Conscience, then, is not just something one 'feels' or 'finds'. It is a moral capacity that can grow and progress; this is why human beings need freedom. Moral conscience is something that progresses with our awareness and understanding of the natural law, and this "Progressive awareness of the Law" occurs at both an individual and a cultural level. Thus, Maritain refers to (past) cultures where there is a "Twilight state of moral conscience" (where natural law is "roughly or rudimentarily known") and, later, a "Daylight state of moral conscience" (where natural

¹²*Dictionary of Philosophy*, 1942 edition, s.v. "Conscience," by Archie J. Bahm.

¹³See Maritain, *Introduction to the Basic Problems of Moral Philosophy*, trans. Cornelia N. Borgerhoff, Albany, NY: Magi Books, 1990, 13-14; see also Maritain, *Moral Philosophy*, ed. Joseph W. Evans, London: G. Bles, 1964, Ch. 14, sect. 12.

¹⁴*The Catholic Encyclopaedia*, 1914 edition, s.v. "Conscience," by John Rickaby. Similarly, the *Catechism of the Catholic Church* states: "Conscience is a judgment of reason whereby the human person recognizes the moral quality of a concrete act that he is going to perform, is in the process of performing, or has already completed." *Catechism of the Catholic Church*, Vatican City: Libreria Editrice Vaticana; Chicago, IL: Loyola University Press, 1994, §1778.

¹⁵Maritain, *Loi naturelle ou loi non-écrite*, texte inédit, établi par Georges Brazzola, Fribourg, Suisse: Éditions universitaires, 1986, 68. See also Maritain, *Introduction to the Basic Problems of Moral Philosophy*, 173.

¹⁶Maritain, *Loi naturelle ou loi non-écrite*, 65.

law is "better known"¹⁷). He also refers to "the crucial moment of the awakening of the moral conscience" in individuals that takes place at "the end of childhood."¹⁸

But while conscience can grow and develop, it can also be corrupted. Maritain refers to the possibility that "my conscience has perhaps been deflected or obscured by my own fault,"¹⁹ and notes that "deviations and warpings due to error and hardening of conscience yielding to passions and perverted habits are also possible." Conscience can also be corrupted by "social pressure and collective perceptions."²⁰

Conscience can develop, then, for good or ill, but it needs opportunities to do so. This is why freedom is necessary. Indeed, we need not only (metaphysical) freedom in order to act morally, but *political* freedom – a political right to conscience. Conscience is a necessary characteristic of a free, fully-human, agent.

Thus, it can be said, after a fashion, that the nature and value of conscience is a source and justification of freedom of conscience, and perhaps of political freedom generally. But there are other explanations or justifications of this freedom as well. We can see the importance of freedom of conscience in at least four respects.

(1) Conscience, first, relates *me* to *my* actions in the most fundamental way. When I act from conscience, or when my conscience is brought to bear on my actions, it reflects my engagement or commitment in my action.

The ability of acting from conscience is, therefore, characteristic (if not the very basis) of my dignity as a person. The late Pope John Paul II, for example, has written that "To obey it [i.e., conscience] is the very dignity of man"²¹ and that "To deny an individual complete freedom of

¹⁷See the 'tableau' in *Loi naturelle ou loi non-écrite*, 196-7.

¹⁸Maritain, *Introduction to the Basic Problems of Moral Philosophy*, 121; see also *Loi naturelle ou loi non-écrite*, 72: "The intellectual 'virtue of the practical intellect or reason ... is at work in the first stage: examining, discussing, appraising circumstances in order to have the law manifested to us in the face of a given situation. In other terms, helping to form a right judgement of conscience in the detailed state [à l'état circonstancié]."

¹⁹Maritain, *Loi naturelle ou loi non-écrite*, 70.

²⁰Maritain, *Introduction to the Basic Problems of Moral Philosophy*, 14.

²¹John Paul II, *Message for the XXIV World Day of Peace (1991)*, section 1; see also *Gaudium et spes*, section 16.

conscience – and in particular the freedom to seek the truth – or to attempt to impose a particular way of seeing the truth, constitutes a violation of that individual's most personal rights."²²

(2) Freedom of conscience is necessary for the integral development of the person. It is the pursuit of the truth as one sees it and the engagement in activities necessary to it that makes people who they are. The development of conscience, then, is essential to being a fully developed person. According to Maritain, for me to be a person, "I have to introduce in the world something unique and new for which I alone am responsible, and the rightness of which is my own business, for which I have to know the law, and to appraise circumstances, yes, but also to commit all what is good in my own subjectivity. Judgement of prudence, or judgement of fully individualized conscience, is absolutely necessary."²³

(3) Freedom of conscience is also important because the support or the violation of that freedom seldom occurs in isolation; its recognition and respect are indicative of a number of other freedoms, such as freedom of association, freedom of speech, and so on.

(4) Finally, freedom of conscience is also necessary for peace; it is by assuring this freedom, particularly for minority groups in states, that toleration and peace can be achieved. This is also reflected in John Paul II's remark: "It is essential that the right to express one's own religious convictions publicly and in all domains of civil life be ensured if human beings are to live together in peace."²⁴

4. Limits to Freedom of Conscience?

Freedom of conscience, then, is a fundamental right, and recall that, in charters and bills of rights, freedom of conscience is generally associated with freedom of religion (as it is in the United States Bill of Rights). But are there any limits to freedom of conscience? If such a freedom is inextricably linked with human dignity, it may seem that it can never be

²²John Paul II, *Message for the XXIV World Day of Peace (1991)*, section 1. John Paul II continues in the same section: "freedom of conscience finds its justification, inasmuch as it is a necessary condition for seeking the truth worthy of man, and for adhering to that truth once it is sufficiently known."

²³Maritain, *Loi naturelle ou loi non-écrite*, 75.

²⁴John Paul II, *Message for the XXIV World Day of Peace (1991)*, section 1; see also John Paul II, *Message on the World Day of Peace (1988)*.

limited and is absolute. Maritain notes that "the right of conscience to hearken unto God, and to make its way to Him – all these things, in the natural as in the supernatural order, cannot be tampered with by the State nor fall into its clutches."²⁵ Maritain also writes that "with respect to the State, to the temporal community and to the temporal power, [the person] is free to choose his religious path at his own risk,²⁶ his freedom of conscience is a natural, inviolable right."²⁷ This is a key point of Catholic doctrine. According to John Paul II, "No human authority has the right to interfere with a person's conscience. Conscience bears witness to the transcendence of the person, also in regard to society at large, and, as such, is inviolable."²⁸ The *Catechism of the Catholic Church* states that "Man has the right to act in conscience and in freedom so as personally to make moral decisions. 'He must not be forced to act contrary to his conscience. Nor must he be prevented from acting according to his conscience, especially in religious matters.'"²⁹ Indeed, given the distinction between the person and the individual – characteristic of Maritain's political philosophy – this freedom belongs to the human being *qua* person, it exists on a plane higher than that of the political community, and therefore it can never be limited by the community.

Nevertheless, Maritain would hold that, while this freedom is inalienable, it is not absolute. (The way in which Maritain deals with this issue tells us not only about freedom of conscience, but also about how he regards all freedoms.)

First, this right is conditioned by the truth. "With respect to God and truth, one has not the right to choose according to his own whim any path whatsoever, he must choose the true path, in so far as it is in his power to

²⁵ Maritain, *Natural Law*, 76.

²⁶ Maritain adds: "If this religious path goes so very far afield that it leads to acts repugnant to natural law and the security of the State, the latter has the right to interdict and apply sanctions against these acts. This does not mean that it has authority in the realm of conscience." *Natural Law*, 79, n. 40.

²⁷ Maritain, *Natural Law*, 79. Maritain adds: "This is how we must understand the right which President [Franklin D.] Roosevelt describes as the 'freedom of every person to worship God in his own way everywhere in the world.'" *Natural Law*, n. 41.

²⁸ John Paul II, *Message for the XXIV World Day of Peace (1991)*, section 1.

²⁹ See *Catechism of the Catholic Church*, §1782. The internal quotation here is to *Dignitatis humanae*, 3 § 2.

know it.”³⁰ Freedom of conscience, then, requires a simultaneous commitment to the pursuit of truth – and this truth cannot be subjective. This is a formal or analytical restriction on freedom of conscience; since this freedom is by definition a freedom to pursue the truth, and is therefore limited by it.

But this is not the only constraint on this freedom. Aside from requiring a commitment to pursue the truth, the exercise of this freedom must be consistent with natural law and with public order. Maritain writes that, while the state does not have “authority in the realm of conscience,” if one’s pursuit of truth – for example, in following a “religious path” – “goes so very far afield that it leads to acts repugnant to natural law and the security of the State, the latter has the right to interdict and apply sanctions against these acts.”³¹ Maritain also holds that “the State has the right to punish me if, my conscience being blind, I follow my conscience and commit an act in itself criminal or unlawful.”³² It does not matter whether my intention is to do good or to do evil. Obeying one’s conscience is not intrinsically good. One’s conscience should reflect the natural law. This is as it should be. As noted above, there can be “deviations and warpings due to error and hardening of conscience yielding to passions and perverted habits”³³ and, therefore, limitations on it.

Thus, to begin with, the state – in virtue of its position as a guardian of order in the community, and when it is necessary – can restrict this freedom in the name of security.³⁴ The limits or restrictions involved,

³⁰Maritain, *Natural Law*, 79. To put it slightly differently, John Paul II writes: “To claim that one has a right to act according to conscience, but without at the same time acknowledging the duty to conform one’s conscience to the truth and to the law which God himself has written on our hearts, in the end means nothing more than imposing one’s limited personal opinion.” *Message for the XXIV World Day of Peace (1991)*, section 3.

³¹Maritain, *Natural Law*, 79, n. 40.

³²Maritain, *Natural Law*, 76.

³³Maritain, *Loi naturelle ou loi non-écrite*, 194-195.

³⁴John Paul II adverts, as well, to “the inalienable right to follow one’s conscience and to profess and practise one’s own faith, individually or within a community, [that] is to be acknowledged and guaranteed, always provided that the demands of public order are not violated.” John Paul II, *Message for the XXIV World Day of Peace (1991)*, section 4. He further adds: “It should be noted that freedom of conscience does not confer a right to indiscriminate recourse to conscientious

however, may be rather minimal. As we have seen, Maritain holds that "This does not mean that [the State] has authority in the realm of conscience;"³⁵ "the State has not the authority to make me reform the judgment of my conscience, any more than it has the power of imposing upon intellects its own judgment of good and evil, or of legislating on divine matters, or of imposing any religious faith whatsoever."³⁶ Nevertheless, Maritain would likely agree with the "Berlin Joint Declaration on Religious Freedom" (1998), and insist that there can be 'restrictions' or limits on freedom of religion in certain circumstances. These are "restrictions on religious freedom based on public order, safety, health or morals or the fundamental rights and freedoms of others," though Maritain would also add that these limits "should be imposed *only* if the state interest is demonstrated to be compelling and based on generally applicable neutral law and the restriction imposed is the least restrictive means of satisfying the state interest."³⁷

Moreover, Maritain allows that the exercise of freedom of conscience can be restricted when it leads to actions that grossly violate the natural law. He does not give examples, but such actions would seem to include the murder or the sacrifice of newborns, slavery, the sterilization of minority groups, and the like. This, again, is a formal restriction of this freedom because, as Maritain insists, the natural law must be present and internalized for judgements of conscience to be possible. Should the state limit the exercise of freedom of conscience on this ground, it is not acting just in virtue of its unique position as a guardian of order; natural law provides the authority for anyone, including the state, to restrain certain acts.

Are there other restrictions that Maritain might allow to be imposed on the freedom of conscience? Perhaps yes. One seems to be that

objection. When an asserted freedom turns into licence or becomes an excuse for limiting the rights of others, the State is obliged to protect, also by legal means, the inalienable rights of its citizens against such abuses" (section 6).

³⁵Maritain, *Natural Law*, 79, n. 40.

³⁶Maritain, *Natural Law*, 76.

³⁷Maritain, *Natural Law*, 76, emphasis mine. See "Berlin Joint Declaration on Religious Freedom" prepared and signed at the International Coalition for Religious Freedom Conference on "Religious Freedom and the New Millennium" Berlin, Germany, 29-31 May 1998.

conscience has to conform broadly to what is reasonable.³⁸ (Presumably this, too, is a formal restriction.) This is consistent with requiring that one's conscience conform to what is true, at least to the extent that one can know it.³⁹

But another possible restriction on this freedom is that one must meet one's pre-existing obligations in this matter. One might propose, as John Paul II did, that, while no human institution has the right to limit or interfere with a person's conscience, the Christian Catholic can be advised – and required – to conform his conscience to the teachings of the Church.⁴⁰

The Catholic Church has the authority to impose such restrictions presumably because it is the repository of truth. (Since the value of conscience is in its relation to truth, it might be argued that this simply expresses just the first formal restriction on freedom of expression noted above.) The Church also has this authority because it reflects reason and the true good. (We might see this as expressing the second and third formal restrictions noted above, that of reason and of the natural law.) But a third possible reason for the restriction of freedom of conscience is that the Church is an aid to conscience. Here, the limits imposed are substantive rather than formal. We may say that a well-formed conscience, because it is a 'practical' thing, is dependent on its good use, and so on. Such a conscience benefits from and, indeed, needs all manner of external

³⁸However, "In order to be good or right, a judgement of conscience finally concretized to the highest degree of individualization or interiorization [the practical judgement] has to conform itself to the right will, as to the *final measure of reason*. This measure exists in the depths of subjectivity, at the very root of the subject and which is its own will, and, for so far as it is itself right, plays a decisive role in the moral dynamism (there is, to be sure, as mixed in a same measure, the eternal law, the natural law, and the rectitude of the will.)" Maritain, *Loi naturelle ou loi non-écrite*, 70-71.

³⁹Maritain, *Natural Law*, 79.

⁴⁰John Paul II, *Message for the XXIV World Day of Peace (1991)*, section 8: "More than anyone else, the Christian ought to feel the obligation to conform his conscience to the truth. Before the splendour of the free gift of God's revelation in Christ, how humbly and attentively must he listen to the voice of conscience! How modest must he be in regard to his own limited insight! How quick must he be to learn, and how slow to condemn! One of the constant temptations in every age, even among Christians, is to make oneself the norm of truth."

help (e.g., teachers, clergy, parents, and what it reads, sees, hears, etc.), and one of these external helps is the Church.

In the list of reasons why freedom may be limited, there is a mix of the logical and the contingent, of the formal and the substantive, which, since we are referring to the freedom of a being that is of this world but not restricted to this world, may be exactly what we should expect. But I do want to suggest that Maritain can have a philosophical, and not simply a theological, basis for the authority of the Church, one that may, as well, allow us to understand better the role of the state *vis à vis* freedom of conscience. This, however, requires a careful interpretation of a point that Maritain only hints at.

5. "Community of Minds" and the Common Good

In virtually all of the texts in which he discusses natural law, Maritain refers to three other kinds of law: eternal law, positive law, and the law of nations (*ius gentium*). When speaking of the last of these three, he often refers to a "common good of civilization" or an "order of civilization," which is a terrestrial good, although not purely material and not simply the good of a particular state. This is consistent with a view that seems to be present in Maritain's writings, that human beings are not just individuals (*qua* part of the State) and persons (in relation to God), but also 'minds' (i.e., persons in relation to one another as persons). In *The Person and the Common Good*, for example, Maritain refers to the existence of a "community of minds" which communicates in the love of truth and beauty.⁴¹

In describing this "community of minds," we are still at a terrestrial level. What this notion indicates, however, is that there can be a relation among human beings independent of any political community. Indeed, what we see in the love of truth and the love or experience of beauty, is a relation to others through something that is beyond the interests of individuals that are found in the state. Thus, we have a reference to (i) a community that is immanent in the world, but in principle greater than any political community, and (ii) something that is more than the material (as we might find in reflecting on what is true or on examples of noble actions, or in having aesthetic experience).

⁴¹Maritain, *The Person and the Common Good*, trans. John J. Fitzgerald, New York: Charles Scribner's Sons, 1947, 63, note.

While this "community" is a terrestrial institution, it is not limited by the needs or demands of a particular state, in just the same way that the common law of civilizations or *ius gentium* is not fixed or determined by the needs or demands of a particular state. Presumably, this community can have expectations of us, and impose duties on us, as 'minds'. There may, in fact, be many such communities, but there is at least one, which Maritain calls "civilization," that we might see as under the rule of the "law of nations," which is an extension of the natural law.

If this notion of a "community of minds" is plausible, then we can see how the Church can impose restrictions on its members, for the Church is such a "community of minds" existing both at the terrestrial level and beyond. We can see how the state can have authority over, but also obligations to, its members as well, because the state is also such a community of minds.

The state, as an external authority – the topmost part of the body politic, concerned with providing mechanisms for the respect of the natural law and with articulating and enforcing positive law – does not have a right to interfere with freedom of conscience. In this respect, the state is simply directed to a terrestrial, common good.

But the state can sometimes be a representative or an instantiation of the order of civilization or of the community of minds. Its relation to its members is, then, also internal; it is involved in our very self-understanding. In this capacity (i.e., not in its capacity as the particular authority in a particular place), then, it can impose limitations on human freedoms – even on freedom of conscience – when, for example, these freedoms or their exercise are inconsistent with other human freedoms, and with the rights of other human beings.

It also follows, however, that the state may also have an obligation to provide the means for freedom, such as freedom of conscience. It has this obligation, I suggest, not because it is a means to the good of an individual, but simply because it is representative of this order of civilization or community of minds. This is why Maritain can say that the state is made for man (i.e., human beings), and not just men (i.e., individuals). On this view, then, Maritain could even hold the view that the state must provide the means for the exercise of freedom of conscience as a positive freedom. Certainly this is the claim of John Paul II: "I wish to repeat what I stated in the Message for the 1988 World Day of Peace: 'Even in cases where the State grants a special juridical position to a

particular religion, there is a duty to ensure that the right to freedom of conscience is legally recognized and effectively respected for all citizens, and also for foreigners living in the country even temporarily for reasons of employment and the like'..." "The State is obliged not only to recognize the basic freedom of conscience, but also to foster it..."⁴²

This notion of a "community of minds," then, can explain how the Church, the state, or any similar institution can have authority over its members, and that it can restrict even our fundamental freedoms in view of some values or non-material ends. Maritain only hints at such a view, but it provides him with a philosophical, rather than a theological, defence of his position that freedom of conscience does not entail "the right to choose according to [one's] own whim any path whatever."⁴³

6. Conclusion

For Maritain, freedom of conscience is a fundamental freedom because (among other reasons) conscience is fundamental to the very possibility of human moral personality. Indeed, freedom of conscience – and specifically religious freedom – has an almost unique status among human rights, since it involves one's freedom to commit oneself to a way of life. Maritain sees it as among the very first of human rights, and in the *International Covenant on Civil and Political Rights* (1966, where, again, it is Article 18), it is "non-derogable."⁴⁴

Still, this freedom, Maritain would note, has its limits, limits determined by the nature and value of conscience and by the truth that it seeks. There are other limits as well, limits that recognize, despite the distinction between the person and the individual, that we are essentially

⁴²John Paul II, *Message for the XXIV World Day of Peace* (1991), sections 4 and 6. In a recent court decision in Canada, for instance, the Québec Superior Court ruled that "[w]here there is a conflict between the exercise of a Charter right and some perceived public interest or private concern, reasonable accommodation, meaning accommodation up to the point of undue hardship, must be shown to facilitate the exercise of the Charter right; "(Rosenberg vs. City of Outremont, unreported decision of the Québec Superior Court, 21 June 2001, No. 500-05-060659-008, pages 7-8, [emphasis added]). See Brad Miller, "Religious Intolerance at City Hall," *Lex View* 47.0 at <http://www.culturalrenewal.ca/lex/lex-47.htm>.

⁴³Maritain, *Natural Law*, 79.

⁴⁴See *International Covenant on Civil and Political Rights*, General Assembly resolution 2200A (XXI) of 16 December 1966, art. 4.

social beings and part of a community of minds. The Church and the state, therefore, have a place in this freedom, and we can find reasons in Maritain's work to explain how one can arrive at this view. This also explains how freedom of conscience is a positive right – i.e., a right that the state must not only accede to, but provide the means to, and guarantee by means of the creation and support of related institutions (such as religious education).

For Maritain, then, the individual right to freedom of conscience and the demands of the community need not conflict. To see this, however, requires understanding not only the formal and substantive limitations of such a right, but also something about what a person is, and how persons are related to other persons. Without such an understanding, however, neither political communities nor the Church can appreciate the precise nature and force of this fundamental freedom and, indeed, the nature and value of human dignity itself.⁴⁵

⁴⁵ An earlier version of this paper was read at Princeton University, on 18 October 2002, to the American Maritain Association conference on "Jacques Maritain and America."

RELIGIOUS FREEDOM

Warayuth Sriwarakuel*

1. Introduction

Freedom is one of the most controversial topics in the history of philosophy. It seems clear that freedom can mean different things to different people – from hard determinists who challenge its existence, to existentialists and process philosophers, who strongly defend it. Interestingly, all people seem to be *free* to use their own definitions of freedom as they desire. For instance, freedom can mean independence, autonomy, creativity, non-attachment, the ability to choose or negate, the ability to speak or do, and even the ability to survive. In this paper, I would like to briefly discuss religious freedom in two senses: religious freedom as a right and as a state of mind. I would also like to show in what way these two are connected.

2. Right

The right to freedom of religion is considered and adopted as one of the human rights by the United Nations. The compatibilist point of view seems to be appropriate for this sense. According to compatibilism, to be free means to be free from external constraint and compulsion. But why should a person have the right to be free from compulsion about religion? If there are many different religious ways, then which one is true?

There are at least three approaches to the above question: exclusivism, inclusivism, and pluralism. Both exclusivism and inclusivism may be considered as kinds of religious extremism. On the one hand, an exclusivist would say that there is *only one* true religious way while, on the other hand, an inclusivist will say all religious ways are true, but their way is still the best. The school of thought and attitude which is considered intermediate is religious pluralism. Religious pluralism holds that there are many true religious paths leading to salvation.

Among these three kinds of attitude, only religious pluralism can support religious freedom as a fundamental human right. Both exclusivism

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and inclusivism cannot promote religious freedom in principle because they assume an "external obligatory force" of some kind. On the one hand, exclusivists believe and hold that there is no salvation outside their way, and so they cannot allow other believers to exercise their right to religion. They are always ready to convert other people. They know only how to preach, not how to listen. To pursue evangelism is to leave no room for dialogue. On the other hand, the inclusivists *seem* to be more open to religious dialogue. However, their dialogue will not last long in practice. Since they believe that their way is truer and safer than those of others, they will ultimately gravitate towards evangelism and place constraints on other forms of belief. As a matter of fact, those who think that their way is truer than others are both arrogant and unwise. For it is obvious that there are no neutral criteria in the world. All criteria are always relative to their users, and they are always incommensurable. I still remember a book I read when I was in the secondary school. It asserted that there are 3 major groups of mankind in the world: the Caucasoid (the White), the Mongoloid (the Yellow), and the Negroid (the Black), and that the Caucasians are the smartest. No doubt, this is because the measurement criteria (IQ tests) were devised by Caucasians.

3. State of Mind

Religious freedom as a state of mind may be classified into two sorts: self-negation and non-attachment. In the first sense, to be religiously free is to be free from one's self. Dostoevsky, in *The Brothers Karamazov*, made clear the difference between authentic and inauthentic freedom. Authentic freedom is identical to self-forgetfulness, whereas inauthentic freedom is the same thing as self-assertion. Freedom as self-assertion, according to Dostoevsky, will never become true freedom because it will inevitably lead to one being a slave of one's desires. This kind of freedom will eventually lead the rich to loneliness and suicide and lead the poor to envy and murder.¹ Religious freedom can still be understood as to be *free from* sin (according to Christian terminology) or *free from* cravings (according to Buddhist terminology).

In the second sense, religious freedom as a state of mind is, in Buddhist terminology, non-attachment. To be religiously free is to be

¹ See Fyodor Dostoevsky, *The Brothers Karamazov*, trans. Andrew H. MacAndrew, New York: Bantam Books, Inc., 1981, 379-80.

beyond any particular religion, sect, rule or principle. Actually, prophets, saints and *Arahats* are good examples of those who are always ready to violate any rule without guilt. Why so? Because their violations of rules are not for themselves, but for others. Let us look at a few cases. The first one is from the Bible.

It happened that one Sabbath day he was taking a walk through the corn-fields, and his disciples began to make a path by plucking ears of corn. And the Pharisees said to him, "Look, why are they doing something on the Sabbath day that is forbidden?" And he replied, "Have you never read what David did in his time of need when he and his followers were hungry – how he went into the house of God when Abiathar was high priest, and ate the loaves of the offering which only the priests are allowed to eat, and how he also gave some to the men with him?" And he said to them, "The Sabbath was made for man, not man for the Sabbath; so the Son of man is master even of the Sabbath."²

From a cursory reading of the story, it seems to be that David, Jesus and their followers broke the rules for themselves. However, from the deeper context of the Bible, we have learned that they were people who sacrificed themselves for others. It is written: "For the Son of man himself came not to be served but to serve, and to give his life as a ransom for many."³

Two other examples of violating rules can be seen in the Buddhist Scriptures. The first example is about the rape of the nun Uppalavannā.

A maiden of wondrous beauty rejects all her suitors, becomes a nun, and attains Arahatship. She takes up her residence alone in a forest hermitage. A former suitor, learning her whereabouts, goes to the hermitage and assaults her. The Buddha preaches to the monks on the transitoriness of sinful pleasures. On a subsequent occasion the monks raise the question whether Arahats are to be blamed for gratifying their passions. The Buddha admonishes them that sexual passion no more adheres to the Arahats than a drop of water to a lotus-leaf. The Buddha persuades King Pasenadi Kosala to erect a

²See Mark 2:23-28 in *The New Jerusalem Bible*.

³Mark 10:45 in *The New Jerusalem Bible*.

convent for the nuns within the city, and forbids the nuns thenceforth to reside in the forest.⁴

From the story it is obvious that wicked people cannot destroy the Arahatsip of the enlightened ones. Once you achieve enlightenment, no one can steal it from you. The enlightened always have an attitude of complete detachment. They are "beyond good and evil." Their deeds arise always from their *agape* or loving kindness.

Let us reflect on another example from Zen Buddhism. Tanzan and Ekido, two monks, were once traveling together down a muddy road. A heavy rain was falling. Coming around a bend, they met a lovely girl in a silk kimono and sash, unable to cross a large mud puddle stretching across the road. "Come on, girl," said Tanzan at once. Lifting her in his arms, he carried her over the mud. Ekido did not speak again until that night when they reached a lodging temple. Then he no longer could restrain himself. "We monks don't go near females," he told Tanzan, "especially not young, lovely ones. It is dangerous. Why did you do that?" "I left the girl there," said Tanzan, and continued: "Are you still carrying her?"⁵

Of Tanzan or Ekido, I think it is clear which one possesses loving kindness. This is also seen in Christianity when Jesus admonishes the Pharisees for their insincere strictness.

It is obvious that the Buddhist way holds the logic of non-attachment or detachment. To understand this way of thinking clearly, we may compare it with other schools of logic. For instance, Aristotelian logic holds the "law of the excluded middle" as the most fundamental principle.⁶ To clarify the differences, we may use the following illustration. Suppose we are participating in a conference, and a waiter asks us, "Tea or coffee?" If we are Aristotelians, we have to choose only one thing between tea and coffee, not both (exclusiveness). If we are Hegelians, we will have both tea and coffee in the same cup (synthesis). If we are Taoists, we will have both tea and coffee in different cups (complimentarity). But if we are Buddhists,

⁴This is a short story from *Buddhist Legends* (Part I), trans. Eugene Watson Burlingame, Harvard Oriental Series, ed. Charles Rockwell Lanman, Oxford: The Pali Text Society, 1995, 98; see the whole story from Part II, 127-9.

⁵*Zen Flesh, Zen Bones: A Collection of Zen and Pre-Zen Writings* comp. Paul Reps, Rutland, VT and Tokyo, Japan: C.E. Tuttle, 1965.

⁶Both the Law of Identity and the Law of Non-Contradiction, the other fundamental laws of western logic, can be reduced to the Law of the Excluded Middle.

we may have tea or coffee (only one thing), or both tea and coffee in the same cup, or both tea and coffee in different cups, or neither tea nor coffee (not both of them).

4. Conclusion

There are no ultimate criteria or standards to judge one religion as being truer, since the truly enlightened from all religions each have their rules and logic, and their own ways for transcending their own rules and logic. Prophets, saints and Arahats can transcend not only all principles and disciplines, but also all kinds of differences and deeds. In other words, people who have true religious freedom can violate their own stricture without guilt because their deeds are always for others (including God and Dhamma), not for themselves, and do not arise from their own sins and defilements. Not only is the freedom to follow one's religious law important, equally important is the freedom to transcend those laws. In this way, the understanding of religious enlightenment is ultimately supportive of the understanding of religious freedom as pluralism.

THE PROBLEM OF JUSTIFYING THE RIGHT TO FREEDOM OF RELIGION

Robert A. Delfino*

1. Introduction

The topic of human rights is one of the most important questions in philosophy. It demands urgent attention because, sadly, the violation of human rights is both a common and global phenomenon. Many different types of human rights violations exist, but in this paper I want to focus exclusively on the persecution of people because of their religious beliefs. Consider, to take just a few contemporary examples, China's harsh treatment of Tibetan Buddhists, Uighur Muslims, Christians, and Falun Gong members, the Sudan's genocide against Christians and other non-Muslims, Iran's torture and execution of Baha'is and Christians, and North Korea's almost complete suppression of religious freedom.¹

The awareness of this global problem is not new. In 1948, after the horrors of the second World War, the General Assembly of the United Nations adopted and proclaimed the *Universal Declaration of Human Rights*, declaring in Article 18: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."²

Unfortunately, as many scholars have noted, the declaration provided no foundation for human rights. For example, Jacques Maritain, who inspired several of those who drafted the declaration, once commented: "Yes, we agree about the rights, but on [the] condition no one asks us

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¹*Annual Report of the United States Commission on International Religious Freedom*, 2 May 2005. <http://www.uscirf.gov/countries/publications/currentreport/index.html>

²*Universal Declaration of Human Rights* (1948), Article 18.

why."³ More recently, Mary Ann Glendon has argued that providing this missing foundation is an important, yet still unfinished, task.⁴

It is also a very difficult task, for several reasons. First, there is widespread disagreement among philosophers concerning the proper definition and justification of human rights. Some philosophers, such as Alasdair MacIntyre, have even argued that human rights do not exist at all, calling them "fictions" and equating them with belief in witches and unicorns.⁵ Second, in order for any justification to be successful globally, it must provide arguments that are acceptable to as many cultures as possible. Some academics have argued that this is a near-impossible task.⁶ With respect to justifying the right to religious freedom, which is the task of this paper, the fact that the religions of the world are so different further complicates this task. Indeed, these differences are often so great that some academics and lawyers have given up hope that a universal definition of religion can be found.⁷

Despite these difficulties, I am optimistic that progress can be made with respect to global human rights. Accordingly, I discuss two possible justifications for the right to religious freedom, arguing that the first is stronger, but that the second has a greater chance of global acceptance.

³Mary Ann Glendon, "Reflections on the UDHR," *First Things* 82 (April 1998), 24.

⁴Mary Ann Glendon, "Foundations of Human Rights: The Unfinished Business," *The American Journal of Jurisprudence* 44 (1999), 1-14.

⁵Alasdair MacIntyre, *After Virtue*, 2nd ed., South Bend, IN: University of Notre Dame Press, 1984, 69-70. Even though MacIntyre is now content to speak of natural law, it seems his position that human rights are fictions remains basically unchanged. See Mark C. Murphy, "MacIntyre's Political Philosophy," *Alasdair MacIntyre*, ed. Mark C. Murphy, New York: Cambridge University Press, 2003, 152-175.

⁶Chris Brown, "Universal Human Rights: A Critique," *Human Rights in Global Politics*, ed. Tim Dunne and Nicholas J. Wheeler, New York: Cambridge University Press, 1999, 103-127. For a more optimistic view, see Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law 1150-1625*, Grand Rapids, Michigan: Wm. B. Eerdmans Publishing Co., 2001), 343-348.

⁷See William E. Arnal, "Definition" in *Guide to the Study of Religion*, ed. Willi Braun and Russell T. McCutcheon, London and New York: Cassell, 2000, 21-34; and for problems concerning the legal definition of religion see T. Jeremy Gunn, "The Complexity of Religion and the Definition of 'Religion' in International Law," *Harvard Human Rights Journal* 16 (Spring 2003), 189-215.

Although some significant differences between them exist, both justifications have a foundation in human nature. I also argue that acceptance of the second does not preclude eventual acceptance of the first. This is important because it provides the global community with an avenue for continued growth with respect to human rights.

2. Human Rights in the Global Community

Let us begin the discussion by briefly clarifying the role that human rights are supposed to play within the global community.

The preamble to the *Universal Declaration of Human Rights* states: "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind." By this the drafters of the Declaration wanted to remind the world of the Nazi atrocities and prevent anything resembling them from ever occurring again. To help accomplish this, the Declaration calls on Member States to protect human rights "by the rule of law." Implicit in this, is an understanding that human rights are prior to, and thus non-reducible to, civil law. Although the Declaration does not give a detailed account of the foundation of human rights, it does suggest, in the preamble, that the foundation is human nature itself by speaking of the "inherent dignity ... and worth of the human person" and of "the equal and inalienable rights of all members of the human family."

If human rights are to provide the strong type of protection outlined in the Declaration, they must satisfy certain conditions. For example, human rights must have an objective foundation, not a relative one. If human rights were relative to culture, for example, then, as history has demonstrated, certain groups of people will lack protection. Human rights must be inalienable, that is unable to be forfeited or lost. If they are not, governments and other political entities will find a way to deprive certain human beings of them. Human rights must be universal, that is belonging equally to all human beings. If they are not, certain human beings will be excluded from their protection.

Thus, in order to play the protective role they are meant to, human rights must be prior to civil law, objective, inalienable, and universal. This is not meant to be an exhaustive list, and certainly there are other useful distinctions we could discuss, such as positive and negative rights. But it is enough, given my limited amount of space here, to clarify what is meant by the human part of human rights. To this we must add a general

definition of rights, which I adopt from Thomas D. Williams, who states: "A right is the moral capacity or power to possess, to do, or to demand one's due. In still simpler terms, a right is the moral capacity to claim from another what one deserves."⁸

The next task is to justify, or establish the correctness of, human rights. This entails two things. First, if possible, we must find a suitable foundation for human rights, one that meets the conditions of priority, objectivity, inalienability, and universality outlined above. Second, we must demonstrate how human rights follow from the foundation. I will not be able to treat these two steps in the detail they deserve, however, due to space constraints and because I want to focus primarily on justifying the right to religious freedom. Concerning this last point, let me give a brief understanding of what religion is, otherwise it will be unclear as to what the right to religious freedom entails.

Religion is a view of the world, which the adherent believes to be true, which answers questions about the meaning of existence, which orders values, which influences the actions of the adherent, which has an object or objects of reverence, and which has as one of its primary goals the improvement of the adherent's existence. Thus, the right to religious freedom is the right to believe in a certain view of the world and the right to live in a way that reflects such belief. Religion is distinguished from philosophy and science because, unlike them, religion allows for views to be held on faith. Religion differs from a cult, which I use in a pejorative sense, because a cult does not have as one of its primary goals the improvement of the adherent's existence. Cults such as the *People's Temple*, which was led by the charlatan James Warren "Jim" Jones, abuse and exploit their members.

I think this understanding of religion is adequate enough to cover most, if not all, of the religions of the world, and so we are ready to examine the first of two justifications for religious freedom I intend to offer. Let us start with the one that is, in my judgment, stronger: natural law.

⁸Thomas D. Williams, *Who is My Neighbour? Personalism and the Foundations of Human Rights*, Washington, DC: Catholic University of America Press, 2005, 13.

3. Natural Law

In Western philosophy, the theory of natural law has had a long history replete with many different versions. The version offered by Jacques Maritain, which is based on Thomas Aquinas, is, in my judgment, one of the strongest and, thus, will occupy our attention here.

Concerning law, Maritain follows Aquinas, who said that law is "an ordinance of reason for the common good, made by the authority who has care of the community and promulgated."⁹ Concerning nature, Maritain also follows Aquinas, who said that the word 'nature' meant "the essence of a thing as directed to its specific operation" and that "a natural thing ... has an inclination to its proper operations and to its proper end, which it achieves by operations."¹⁰ To talk about nature, then, is to talk about the kind of being something is (ontological structure), the actions proper to it, and its end (purpose). For example, it is in the nature of bees, which are flying insects (ontological structure), to gather nectar from flowers to make honey (proper action) in order to have food for the winter and to help flowers reproduce through pollination (purpose).

The nature of a thing determines how that thing should function and for what end it should act. Knowing the nature of an individual thing allows us to judge whether or not the individual thing in question is good or bad. For example, a worker bee that cannot fly is a bad (defective) bee because it does not function the way it should and because it does not achieve its proper end (the production of honey and the pollination of flowers). To talk about natural law, then, is to talk about a thing's normality of functioning, and its purpose or end. Natural law, unlike civil law, is an unwritten law that is immanent in things. As Maritain expresses it, "Any kind of thing existing in nature, a plant, a dog, a horse, has its own natural law, that is, the normality of its functioning, the proper way in which, by reason of its specific structure and specific ends, it should achieve fullness of being either in its growth or in its behaviour."¹¹

⁹Thomas Aquinas, *Summa theologiae*, I-II, 90, 4, responsio, trans. Thomas Gilby, Blackfriars Edition, New York-London: McGraw-Hill, 1964-1969, 28: 17.

¹⁰Thomas Aquinas, *De Ente et Essentia*, chap. 1, in *On Being and Essence*, trans. Armand Maurer, 2nd. ed., Toronto: Pontifical Institute of Mediaeval Studies, 1968, 32.

¹¹Jacques Maritain, *La loi naturelle ou loi non écrite*, in *Natural Law: Reflections on Theory and Practice*, ed. William Sweet, South Bend, IN: St. Augustine's Press, 2001, 28.

Maritain explains that this *metaphysical should* becomes a *moral should*, in the case of humans, because humans are free agents and, thus, can choose to act in harmony with their nature or against it.¹² To take a simple example, smoking cigarettes is bad for humans because it impairs proper functioning (it damages the lungs) and because it can, by causing cancer, lead to death. Even though many humans know this, as free agents, some of them choose to smoke anyway. It would be wrong to conclude, however, that defiance or ignorance of natural law is evidence that no universal natural law for humans exists. Maritain distinguishes knowledge of natural law from its ontological foundation: "[Natural law is] an order or a disposition which human reason can discover and according to which the human will must act in order to attune itself to the essential and necessary ends of the human being."¹³ Thus, while our knowledge of natural law might change over time, natural law itself is objective and unchanging.

Natural law, as immanent in human nature, would seem to be a good foundation for human rights because it meets the conditions of priority, objectivity, inalienability, and universality we outlined above. Human nature is clearly prior to civil law, is a matter of objective fact, is something that cannot be forfeited, and is something common to all humans. Not surprisingly, Maritain says: "The same natural law which lays down our most fundamental duties ... is the very law which assigns to us our fundamental rights."¹⁴ Because human beings, by nature, are animals that are free and intellectual, human beings require, of necessity, access to certain goods (food, sleep, liberty, knowledge, etc.) if they are to be able to live and fully realize their nature. Such necessary goods constitute the domain of natural human rights.

The right to freedom of religion has its basis in human nature as well. As Aristotle correctly remarked, "All men by nature desire to know."¹⁵ As intellectual beings, humans are curious by nature. It is natural for humans to ask questions about life, death, the meaning of life and death, and about whether or not a supreme being exists. The religions

¹²Maritain, *La loi naturelle ou loi non écrite*, 29.

¹³Maritain, *La loi naturelle ou loi non écrite*, 27.

¹⁴Jacques Maritain, *Man and the State*, Chicago: University of Chicago Press, 1951, 95.

¹⁵Aristotle, *Metaphysics*, book I, in *The Basic Works of Aristotle*, ed. Richard McKeon, New York: Random House, 1941, 689.

of the world provide answers to these deep questions, often going beyond whatever human reason alone could ever supply. Since it is natural for humans to search for such answers, every human should be allowed to study the religions of the world and choose the one that he or she thinks provides the best answers.

The right to freedom of choice follows from the fact that humans are, by nature, free beings. With few exceptions – for example, the very young and the very old – it is impossible to live as a human being and not make personal choices on a daily basis. Each of us must choose what clothes to wear, what food to eat, what to do during our day, and so on. Of course, we do not have the right to do whatever we want. Natural rights come from natural law, which concerns the common good. Therefore, I do not have a right to act in such a way that damages the common good. For example, I cannot set fire to my city, as Nero, allegedly, set fire to ancient Rome. For the same reason, some religious practices, such as forced conversion, which historically have been performed by practitioners of various religions, are not protected under the right to religious freedom.

This highlights an important distinction between the right to religious belief, and the right to practice one's religion. The first right is inalienable and inviolable, but the second right, while inalienable, is violable under certain circumstances. For example, Christians have certain beliefs about life, death, judgment, heaven, and hell. The right to believe these things is inalienable (it cannot be forfeited) and inviolable (it cannot be infringed upon by the State under any circumstances). But Christians, as part of their religious life, also congregate in churches for public prayer, and evangelize by speaking to people who are willing to listen to them. The right to practise these things is inalienable, but under certain circumstances the State has the right, for sake of the common good, to infringe upon these rights. For instance, suppose one Sunday there was a violent riot occurring throughout a city. The State, in order to prevent loss of life, might order everyone to stay in their homes while the police try to quell the riot. As a result of this order Christians would be unable travel to church to practise their religion. This type of infringement is allowable only because it is for the sake of the common good. For the same reason, the State has the right to investigate allegations of abuse and exploitation of members of a religious group.

4. Objections to Natural Law

Although natural law seems to be a good foundation for the right to religious freedom, there are some objections to it that must be answered if it is to have any chance of global acceptance. For example, whereas Aristotle affirmed the presence of teleology (things acting, according to their nature, for a purpose) in the world, the majority of contemporary scientists do not. A Darwinian evolutionist who believes that life on planet Earth is simply an accident – the result of natural selection acting on random variation – might argue that the only natural law is survival of the fittest. Thus, while it might be true that humans necessarily require certain goods to live, that does not mean that humans have a right to these goods. Just as it is natural for some species to be driven to extinction by other species, so are some human civilizations conquered and destroyed by others. How does anyone have the right to claim from another what one, allegedly, deserves?

Maritain's answer to this objection is that God is the ultimate foundation of natural rights, because the natural law is a participation in the eternal law, which is God's plan for the universe:

[E]very right possessed by man is possessed by virtue of the right possessed by God, Who is pure Justice, to see the order of His wisdom in beings respected, obeyed, and loved by every intelligence. It is essential to law to be an order of *reason*, and natural law, or the normality of function of human nature known by knowledge through inclination, is *law*, binding in conscience, only because nature and the inclinations of nature manifest an order of reason, – that is of *Divine Reason*. Natural law is law only because it is a participation in Eternal Law.¹⁶

To understand Maritain's point, suppose that God does not exist and that life on this planet is nothing more than the result of blind forces and chance. Any resulting "order in nature" would be non-rational (since it was not caused by reason), contingent (since it could have developed another way), and mutable (since it could change in the future). This would certainly be a weak foundation for morality and human rights. Maritain, discussing this scenario, asks: "[W]hy should I be obliged in conscience by a purely factual order?"¹⁷ In this he seems to echo David Hume's point

¹⁶Maritain, *Man and the State*, 96.

¹⁷Maritain, *Natural Law*, 46.

that we cannot derive an ought (how things should be) from an is (the way things are).¹⁸

The reason why we could not derive an ought from an is in this atheistic scenario is simple. The absence of God (the intelligent cause of the universe) precludes nature (human or otherwise) from having a teleological dimension. Without what MacIntyre calls "functional concepts" (defining things in terms of their function and purpose), no ought can be derived from an is:

[T]hose who have insisted that *all* moral arguments fall within the scope of such a principle ['No "ought" conclusion from "is" premises'] may have been doing so, because they took it for granted that *no* moral arguments involve functional concepts. Yet moral arguments within the classical, Aristotelian tradition – whether in its Greek or its medieval versions – involve at least one central functional concept, the concept of *man* understood as having an essential nature and an essential purpose or function.¹⁹

God, as a supremely intelligent cause, provides the teleology in nature required for natural law. God, as the supremely good creator of the world, orders the world with reason for the common good of all, thus providing the character of law required by natural law. As Maritain puts it, "If the Natural Law does not involve the divine reason, it is not a law, and if it is not a law, it does not oblige."²⁰ Thus, without God there are no natural human rights.

It might be objected that this argument is circular because the right to religious freedom ultimately comes from God, but God's existence is a part of my religious belief. In other words, I have a right to religious freedom because of my religious beliefs. This objection would stand if human beings were unable to prove God's existence using reason alone. Maritain, however, disagreed with this, stating, "This concept of Eternal Law is not solely theological... [I]t is a philosophical truth as well, one which the philosopher with his means alone can reach and establish."²¹

¹⁸David Hume, *A Treatise of Human Nature*, book III, part I, section I, ed. L. A. Selby-Bigge, 2nd ed., Oxford: Oxford University Press, 1978, 469.

¹⁹MacIntyre, *After Virtue*, 58.

²⁰Maritain, *Natural Law*, 47.

²¹Maritain, *Natural Law*, 40.

The majority of contemporary philosophers, of course, disagree with Maritain that God's existence can be demonstrated. Some philosophers – for example, existentialists and postmodernists – even deny that humans share a common nature. Add to this the fact that the majority of scientists do not recognize teleology in nature, and it seems difficult to get even Western countries to accept natural law as the foundation of human rights. But even if these problems did not exist, there is one problem that I think precludes many cultures from accepting natural law as the foundation for the right to religious freedom. It is an objection raised by Damien Keown:

If human dignity is the basis of human rights Buddhism would seem to be in some difficulty when it comes to providing a justification for them. The theistic religions, on the other hand, seem much better equipped to provide an account of human dignity. Christians, Muslims and Jews typically refer to the ultimate source of human dignity as divine... [I]t is difficult to see how any of these things [i.e., *Nirvāṇa*, *Śūnyata*, and *Dharmakāya*] can be the source of human dignity in the way that God can, since no school of Buddhism believes that human beings are created by them.²²

The fact is that other religions of the world, not just Buddhism, do not believe that only one God, who is a transcendent creator, exists. Therefore, if we are to appeal to cultures where such religions are dominant we need a justification for the right to religious freedom that does not require, as natural law does, a Western notion of God. Alan Gewirth's ethical rationalism provides such a justification, though it is not as strong, in my judgment, as the one provided by natural law.

5. Gewirth's Ethical Rationalism

In his book *Reason and Morality*, Gewirth spends over a hundred pages to justify the *Principle of Generic Consistency* (PGC): "Act in accord with the generic rights of your recipients as well as of yourself."²³ He considers this to be the supreme principle of morality, and he claims that it can be derived from a rational analysis of voluntary and purposive action. The generic rights of which he speaks are rights to freedom and well-being,

²²Damien Keown, "Are There 'Human Rights' in Buddhism?" *Journal of Buddhist Ethics* 2 (1995), 12-13.

²³Alan Gewirth, *Reason and Morality*, Chicago: University of Chicago Press, 1978, 135.

which he holds are the necessary conditions of action and, thus, are required by all agents. To be an agent a person must be able to control his or her behaviour by unforced choice, must have relevant circumstantial knowledge beyond what is present to immediate awareness, and must have the ability to reflect rationally on his or her purposes.²⁴ Gewirth's understanding of rationality is very narrow: "[Reason comprises] only the canons of deductive and inductive logic, including among the latter its bases in particular sense perceptions."²⁵

According to Gewirth, the *PGC* along with the necessary conditions of human action provide the justificatory basis of human rights. He summarizes the four main steps of his argument as follows:

First, every agent holds that the purposes for which he acts are good [from his standpoint, based] on whatever criterion (not necessarily a moral one) enters into his purposes. Second, every actual or prospective agent logically must therefore hold or accept that freedom and well-being are necessary goods for him because they are the necessary conditions of his acting for any of his purposes; hence, he holds that he *must* have them [to the extent that he desires to fulfil his purposes]. Third, he logically must therefore hold or accept that he has rights to freedom and well-being; for, if he were to deny this, he would have to accept that other persons may remove or interfere with his freedom and well-being, so that he *may not* have them; but this would contradict his belief that he *must* have them. Fourth, the sufficient reason on the basis of which each agent must [personally] claim these rights is that he is a prospective purposive agent, so that he logically must accept [on pain of contradiction] the conclusion that all prospective purposive agents, equally and as such, have rights to freedom and well-being. This conclusion is equivalent to the *PGC*.²⁶

According to Gewirth, there is no way for an agent to avoid the conclusion of this argument, "all prospective purposive agents, equally and as such, have rights to freedom and well-being," without contradiction. If, for example, an agent tries to avoid the conclusion by claiming that he has

²⁴Gewirth, *Reason and Morality*, 120.

²⁵Gewirth, *Reason and Morality*, 22.

²⁶Alan Gewirth, "Introduction," in *Human Rights*, Chicago: University of Chicago Press, 1982, 20.

rights to freedom and well-being but other agents do not, he contradicts himself because other agents are merely claiming the same rights he claims for himself for exactly the same reason he claims them: because freedom and well-being are necessary conditions of action. If an agent tries to avoid the conclusion by holding that he does not have rights to freedom and well-being because he has no purposes that he desires to fulfil, then he ceases to be an agent, which contradicts our initial premise. Thus, every person is forced to admit either: (1) that he or she is not an agent, and thus has no purposes that he or she desires to fulfil – but almost no one could admit this, or (2) that, as an agent, he or she has rights to freedom and well-being and, thus, “all prospective purposive agents, equally and as such, have rights to freedom and well-being.”

There are many advantages to Gewirth's argument for human rights. Unlike natural law, the metaphysics of Gewirth's argument is minimal and it does not require God for the foundation of human rights. Human rights are natural rights, for Gewirth, to the extent that humans are, by nature, agents. As such, it seems Gewirth has given us a foundation for human rights that meets the conditions of priority, objectivity, inalienability, and universality we outlined above. The fact that humans are agents is prior to civil law and it is an objective fact. Concerning inalienability and universality, however, natural law is stronger.

The reason for this is that only agents can claim the rights to freedom and well-being. Young children, the mentally handicapped, and other marginal agents only possess rights to a lesser degree. Gewirth explains: “varying degrees of having the abilities of agency justify varying degrees of having the rights, because of the way in which the having of the abilities bears on individuals' inherent capacity for exercising the rights without harm to themselves or others.”²⁷ Unlike natural law, under which human rights are perfectly inalienable, humans can lose their rights, according to Gewirth, to the degree to which they lose their ability to act as agents. Old age, disease, and other factors can cause this. For the same reason, unlike natural law, human rights are not as universal. As we have seen, marginal agents do not possess the rights in equal measure as do prospective

²⁷ Alan Gewirth, “Replies to My Critics,” in *Gewirth's Ethical Rationalism: Critical Essays with a Reply by Alan Gewirth*, ed. Edward Regis, Jr., Chicago: University of Chicago Press, 1984, 226.

purposive agents. Still, under most circumstances, Gewirth is able to provide a fairly strong foundation for human rights.

The right to religious freedom is contained in the general right to freedom to the extent that freedom is a necessary condition of purposive action. As Gewirth explains, "In general, the *PGC* requires that each person be left free to perform any actions he wishes so long as he does not threaten or violate other person's rights to freedom (by coercing them) or to well-being (by harming them)."²⁸ Thus, the *PGC* justifies limiting the practice of religious freedom, when necessary to protect the rights of agents to freedom and well-being, in a similar way to how natural law limits the practice of religious freedom for the sake of the common good.

6. Objections to Gewirth's Ethical Rationalism

For all of its strengths, Gewirth's ethical rationalism is not without weaknesses. One obstacle to global acceptance might be the sheer complexity of the argument. The compressed form of the argument I have given does not give a sense of the dozens of steps and hundreds of pages Gewirth spends in order to present his argument in full. The fact that hundreds of philosophers have attacked his argument at virtually every stage further complicates prospects for global acceptance.²⁹

Another weakness concerns what is probably the most controversial step of Gewirth's argument, the third one. MacIntyre, for example, has argued it does not follow that because an agent recognizes that freedom and well-being are necessary conditions for acting that an agent has a right to freedom and well-being.³⁰ In other words, it does not follow from the fact that I have a need to X that I have a right to X. This essentially raises the is-ought problem we discussed earlier.

Gewirth has addressed such concerns in a lengthy article titled "The 'Is-Ought' Problem Resolved," which requires more treatment than I can afford it here.³¹ However, in replying to W. D. Hudson's critique of the article, Gewirth suggests that his argument is still valid even if it crosses the is-ought gap:

²⁸Gewirth, "Introduction," in *Human Rights*, 17.

²⁹Deryck Beyleveld has collected many of these arguments in *The Dialectical Necessity of Morality: An Analysis and Defense of Alan Gewirth's Argument to the Principle of Generic Consistency*, Chicago: University of Chicago Press, 1991.

³⁰MacIntyre, *After Virtue*, 66-67.

³¹Gewirth, "The 'Is-Ought' Problem Resolved" in *Human Rights*, 100-127.

My main concern is not with the 'is-ought' problem; it is, rather, to show that every agent logically must accept certain moral 'ought'-judgments. Hence, if being an agent, or engaging in action, is not something that can be stated as a "pure, unadulterated statement of fact," this does not affect my general thesis. What it would show instead is that the *factual world* of human action is "loaded with values" for every agent; and this is something I would gladly accept so long as the facts and values in question are acknowledged to be ineluctable for every agent. It is the *necessity* of the argument that is crucial, not its crossing some logical gap.³²

Whatever the final verdict is, of Gewirth's success in dealing with the is-ought problem, I do not think he is able to handle it as effectively as natural law can. The reason for this is that natural law overcomes the is-ought problem by employing a teleology that has as its ultimate foundation God, who is unchanging and the supremely intelligent and good creator of the world. Gewirth does not have an option as strong as this available to him within the confines of his argument.

7. Conclusion

The two justifications for the right to religious freedom we have analyzed have their strengths and weaknesses. Gewirth's ethical rationalism, because it has a minimalist metaphysics that does not require a western notion of God for its justification, is more likely to have a greater chance of global acceptance. Natural law, however, provides a stronger justification for the right to religious freedom, to the extent that it provides a stronger foundation for human rights in general, especially with respect to inalienability and universality, and because of how well it handles the is-ought problem.

Both views, despite some significant differences, have a foundation in human nature. Both theories, for example, place important emphasis on humans as free and rational agents. To this extent, acceptance of Gewirth's argument does not preclude eventual acceptance of natural law theory. Natural law theorists can incorporate much of what Gewirth has argued by adding an understanding that human agency is part of natural law, which ultimately is a participation in God's eternal law for the world.

³²Gewirth, "Replies to My Critics," in *Gewirth's Ethical Rationalism*, 223-224.

I do think that there will come a time in the future when a majority of scientists and philosophers re-affirm both the presence of teleology in the world and the existence of an intelligent cause of the universe. But until then, I suggest that a global attempt be made to promote Gewirth's argument for human rights. This seems to have been Gewirth's final wish as he was working on a new book titled *Human Rights and Global Justice*, which, sadly, remained unfinished at his death in 2004.³³

³³I would like to thank Pawel Skrzydlewski, from Katolicki Uniwersytet Lubelski Jana Pawla II, for helpful suggestions on this paper.

RELIGIOUS PLURALISM AND FREEDOM OF RELIGION

Jove Jim S. Aguas^{*}

1. Introduction

Our world today is highly diverse and pluralistic, with a wide range of cultures and lifestyles, philosophies, and belief systems. Yet, we also experience the interconnections, the overlapping of cultures, rationalities and beliefs. It is not difficult to see the extremely intricate interconnectedness of human life across the planet and the oneness of humanity. The consciousness of human interconnectedness is changing the way we construct our identities and orient ourselves toward life in the world. Today, neither people nor institutions can avoid contact or knowledge of some cultures. Whether people accept, reject, or modify the concepts or values which they encounter from other societies and cultures, whatever they do will greatly affect their identities and the way they look at their own identities.

The same could be said about religion. Although there may still be some religions that attempt to close themselves from the influence of other religions, they cannot remain either indifferent or exclusive. Religion significantly influences our understanding and all human affairs. The fact of religious diversity leads us to religious pluralism, and this, in turn, to a call for religious freedom. I want to argue that, if we take religious freedom seriously, and if we also take a gentler and more accommodating stance regarding our religious convictions and look at the other religions with understanding, openness, and respect, then, the practice of religion need not be, as it often has been, a reason or cause of violence.

2. Religion and Truth

No institution has exercised as profound a role and has affected human history as has religion. History reveals the pervasive influence of religion on human understanding and human affairs. Among others, religion offers

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a comprehensive explanation of the universe and man's place in it. It tells man where he came from, where he is at the moment, where he is going, and how he can get there.¹ Religion has been used to legitimize social and political mores, rituals, practices, moral standards, and norms of every human community. Nevertheless, it is also a concept that escapes uniformity of understanding, so that arriving at a common definition of religion is almost impossible.

Religion is also a source of many values. It gives man reasons for living, for striving and for committing himself to a higher level of existence. It gives man a sense of dignity and self-worth; it gives man something to hope for, something to believe in, and some sense to those things that are beyond his comprehension. It gives man comfort in sorrow, courage in danger, and joy amidst despair.² However, from religion sprung various feelings and emotions, sentiments and reasons.

Certainly, religion holds power over humanity and has inspired a great number of individuals – from teachers to artists, from soldiers to writers, from subjects to leaders. It has created saints and martyrs and moved men to write about their beliefs, to act according to their faith and to offer their lives for their faith; and, thus, it has ignited countless reformations and revolutions.³ As a consequence, it has been the cause of much of the bloodshed and violence throughout human history. From time immemorial, many wars were fought on some religious ground or because of differences in religious beliefs. Many of the violent acts were perpetuated in the name of religion.⁴

Although it is quite difficult to establish what religion is, given the differences among religions, there are a number of characteristics common to all of them. First, there is a reference to a supernatural order and a supernatural being, through which the fundamental aspects of human life are explained and evaluated; religions recognize the sacred or supernatural realm from which the supernatural being and forces operate. From this reference to the supernatural, there is a corresponding subjective disposition towards the supernatural order; a feeling of dependence, of

¹Louis P. Pojman ed., *Philosophy of Religion: An Anthology*, 2nd ed., California: Wadsworth Publishing Co., 1994, xi.

²Pojman ed., *Philosophy of Religion*.

³Pojman ed., *Philosophy of Religion*.

⁴Jove Jim S. Aguas, "Promoting Human Dignity in a Culture of Violence," *Philosophy, Culture and Traditions* 3 (2005), 63.

awe, of admiration and love, a sense of mystery, a sense of guilt and fear, and a sense of moral obligation towards the supernatural being. It is common to religions to practise ritual acts around the supernatural being or beings and the sacred objects associated with the divine; prayers, sacrifices and other forms of communication with the supernatural or divine; these rituals are used to establish the right relationship with the divine. A system of ethics and a moral code are believed to be sanctioned by the supreme being. Every religion has a particular world-view which provides a stable context within which each person is able to relate himself to others, the world and to the divine. This world-view not only fixes the relationship of God or the gods with men and nature, but organizes social life.⁵

Beyond these commonalities, however, is a vast array of diversities – in doctrines, beliefs, teaching, practices, norms, and so on. These diversities have frequently resulted in misunderstandings, conflicts and, worse, chaos and violence.

The major religions (like Christianity, Judaism, Islam, Buddhism, and Hinduism) have claimed truth and validity about their beliefs and doctrines. Yet while each religion claims a relation to and an inspiration from one divine and ultimate Reality, their teachings, doctrines and norms embody different truths and different commitments. Hence, one might well ask: Which of them is true and the right path towards salvation and happiness?

The philosophical question of the relation of religion and truth has resulted in three basic positions: exclusivism, inclusivism, and pluralism.

Exclusivism holds that there is only one true religion which is the way to God and to salvation. Though there are truths in other religions, the basic claims about the nature of God and salvation or liberation are contraries that they cannot be all possibly true. So, one set of claims and one religion is exclusively true; it alone describes the way to salvation or liberation. The Catholic Church, asserting divine revelation as one of the sources of its faith, has claimed exclusivity in the past.

Inclusivism agrees with the exclusivism that the absolute provision for salvation is revealed in one religion. However, God might reveal himself or act graciously in various ways in a variety of places and times that makes salvation available to all. Hence, people can encounter God and

⁵*The Encyclopaedia of Philosophy*, 1967 edition, s.v. "Religion," by William P. Alston, 141-142.

receive God's grace in diverse religions; adherents of other religions can be saved because of persons or events specified by the true religion, though without knowing anything about the religion that embodies the objective provision for salvation.

Pluralism in general holds that all religions – like Judaism, Christianity, Islam, Buddhism, and Hinduism – are different paths to the same God or Ultimate Reality. The Holy and Divine is beyond our finite capacity to understand and individual religions are the earthly appearances of God's presence or interpretations of God. The religious pluralist, therefore, contends that man must abandon the claim to exclusivity and accept the thesis that many paths lead to God and to salvation.

3. Religious Pluralism

The prevailing attitude today is pluralism. Given the diversity of cultures and traditions in the world, it is important that each culture is recognized and respected in order to attain harmony and peace in a world perceived to be violent and intolerant. In the religious sphere, religious pluralism is the most viable and acceptable position since it offers ways to avoid conflict among the major religions and could be a ground for dialogue and harmony.

Religious pluralism in its broad sense holds that no religion can claim sole authority to teach absolute truth. Given the finite and fallible nature of human beings, no religious text written by man can absolutely describe God, God's will, or God's counsel, since it is God apart from man who reveals the divine thoughts, intentions, and volition perfectly.⁶

Religious pluralists point out that nearly all religious texts are an assortment of human observations presented, for example, as historical narratives, poetry, essays, and plays. The religious text, therefore, is open to interpretation. Although all religions attempt to capture reality, their attempts occur within particular cultural and historical contexts that affect the writer's viewpoint.⁷ In this light, no religion is able to comprehensively capture and communicate all truth.

⁶"Religious Pluralism," http://en.wikipedia.org/wiki/Religious_pluralism (29 March 2006).

⁷"Religious Pluralism," http://en.wikipedia.org/wiki/Religious_pluralism.

Since men have different perceptions of the ultimate reality, they express different interpretations. The Buddhist parable of six blind men illustrates this point.

Once upon a time, a group of religious seekers from different traditions came together and began to discuss the nature of God. Offering quite different answers, they began quarrelling among themselves as to who was right and who was wrong. Finally, when no hope for reconciliation was in sight, they called in the Buddha and ask him to tell them who was right. The Buddha proceeded to tell them a story.

"There was once a king, who asked his servants to bring him all the blind people in town and an elephant. Six blind men and an elephant were set before him. The king instructed the blind men to feel the elephant and describe it. "An elephant is like a large water pot," said the one who touched the elephant's head. "Your majesty, he is wrong," said the second who touched an ear. "An elephant is like a fan." "No," insisted a third, "an elephant is like a snake," as he held its trunk. "On the contrary, you are mistaken," said a fourth as he held the tusks, "an elephant is like two prongs of a plough." The fifth man demurred and said, "it is quite clear that an elephant is like a pillar," as he grasped the animal's rear legs. "You are all mistaken," insisted the sixth. "An elephant is like a long snake," and he held up the tail. Then they all began to shout at each other about their convictions of the nature of an elephant."

After the Buddha told the story, he commented, "how can you be so sure of what you cannot see? We are all like blind people in this world. We cannot see God. Each of you may be partly right, yet none completely so."

Believers in religious pluralism hold that their own particular belief system is 'true'. They believe that their religion is the most complete and accurate interpretation of the divine, but they also accept that other religions teach many truths about the nature of God and man, and that it is possible to establish a significant amount of common ground across all belief systems.

Some pluralists respond that religion does not make ultimate truth claims and, hence, there is no problem with diverse religious traditions.

The sole concern of religion is to make life meaningful.⁸ Other pluralists hold that religious concepts express not the divine reality itself, but man's attempt to understand this divine reality. Religious concepts are not literal descriptions of this reality, they simply express how this reality appears to man – they are simply man's attempt to understand the divine reality.⁹

Many religious pluralists claim that members of other faiths are searching for truth in different ways, and that human fallibility limits all religious knowledge. Despite these limitations, religious pluralism does not preclude individual thought or participation in rituals or spiritual experimentation with any particular religion or community; rather, such worshippers practise according to personal traditions, preferences, and community norms, while recognizing a host of practices or interpretations by others.¹⁰ The religious pluralist, therefore, contends that man must abandon the claim to exclusivity and accept the thesis that many paths lead to God and to salvation. Each major religion has been a different interpretation of the same Ultimate Reality, to same salvation; they are different paths to the same reality.¹¹ As Lord Krishna in the *Bhagavad Gita* says: "However men approach me, even so do I accept them: for on all sides, whatever path they may choose is mine."¹²

4. John Hick's Philosophy of Religious Pluralism

The most well known advocate of religious pluralism in the contemporary west is the British philosopher John Hick. Starting with the basic premise of the pervasive religious diversity in the world, he explains this diversity as different ways of conceiving and experiencing the one ultimate divine Reality. This ultimate divine Reality has been thought and expressed by different human mentalities forming and formed by different intellectual frameworks and devotional techniques.¹³ Hick explains that religion has been a virtually universal dimension of human life; that God historically revealed himself through various individuals in various situations where

⁸Michael Peterson, William Hasker, Bruce Reichenbach, and David Basinger, *Philosophy of Religion*, New York: Oxford University Press, 1996, 494.

⁹Peterson, Hasker, Reichenbach, and Basinger, *Philosophy of Religion*.

¹⁰"Religious Pluralism," http://en.wikipedia.org/wiki/Religious_pluralism.

¹¹Pojman ed., *Philosophy of Religion*, 520.

¹²*The Bhagavad Gita*, Oxford: Clarendon Press, 1969, 7.

¹³John Hick, "The Philosophy of World Religions," *Scottish Journal of Theology* 37 (1984), 229-231.

geographic isolation prevented a common revelation to all humanity. Seen in historical context, the major religions of Judaism, Christianity, Islam, Buddhism, and Hinduism are not essentially rival. They began at different times and in different places, and each expanded outwards into the surrounding world.¹⁴

All the main religions recognize that the ultimate divine reality is infinite and as such transcends the grasp of the human mind. God cannot be defined or encompassed by human thought. The God whom our mind can penetrate and whom our thought can circumnavigate is merely a finite and partial image of God.

Just like the six blind men could not completely perceive the elephant, so we cannot have a full grasp of the ultimate and divine reality. As our intellect processes everything we perceive, our partial perceptions of God are further coloured by our intellectual limitations. Hick writes: "The human mind is not a passive screen on which the world imprints itself. On the contrary, it is continuously involved in interpreting the data of perception in terms of the conceptual systems within which we live."¹⁵ There is an objective reality, but the form in which we are conscious of it is constructed by our perception and thinking. There is an objective divine ultimate Reality, but there is a human factor in the forms in which we are aware of it. We must distinguish between the Ultimate Divine Reality in itself and that Reality as perceived or experienced by human cognition. Hick's distinction follows Kant's distinction between the noumenon or the thing-in-itself and the phenomenon or the thing-as-it-appears to us.

The various prayers and hymns from different religions express diverse encounters with the same divine reality. These encounters have taken place within different human cultures by people of different experiences and thinking. Behind these encounters is the same infinite divine reality; the divisions that go with them represent secondary human historical developments. According to Hick, "the different encounters with the transcendent within the different religious traditions may all be encounters with the one infinite reality; though with partially different and

¹⁴John Hick, "Religious Pluralism and Ultimate Reality" in Louis P. Pojman, *Philosophy of Religion: An Anthology*, 2nd ed., California: Wadsworth Publishing Co., 1994, 523.

¹⁵Dennis Okholm and Timothy Philips eds., *Four Views on Salvation in a Pluralistic World*, Grand Rapids, Michigan: Zondervan Publishing House, 1996, 46.

overlapping aspects of that reality."¹⁶ Hence, "although the language, concepts, liturgical actions and cultural ethos differ widely from one another, yet from a religious point of view basically the same thing is going on in all of them, namely, human beings coming together within the framework of an ancient and highly developed tradition to open their hearts and minds to God, whom they believe makes a total claim on their lives."¹⁷

Hick stresses that the different truth-claims of the world's major religions are best understood and appreciated as expressions of their differing perceptions, through different religio-cultural "lenses," of the one ultimate divine Reality, as expressions of their different answers to the boundary questions of origin and destiny, and their different historical memories.¹⁸

5. Religious Freedom

Religious freedom is manifested in freedom of conscience and freedom of worship. This is further extended to freedom of religious association and freedom of religious expression. It is "freedom, on the one hand, for individuals to profess a personal religious faith in conformity with their conviction of conscience, and freedom, on the other hand, for their religious communities to put this conviction into practice and make use of the means which are indispensable for that purpose."¹⁹

The recognition of religious freedom came as an offshoot of the recognition of personal freedom of the human individual. During the medieval times, when ordinary individuals did not enjoy personal freedom, there was no clamour for religious freedom. Although different thinkers conceived of the notion of the free will, there was not much discussion of personal freedom, which is the freedom of the person to determine his own course of action and his own beliefs and thoughts. Religious freedom, then, was never an issue. People were baptized according to the religion of the king or the leader and professed the same faith as the king. The religion of the king is the true religion. For much of the medieval period,

¹⁶John Hick, "Religious Pluralism and Ultimate Reality," 524.

¹⁷Okholm and Philips, *Four Views on Salvation in a Pluralistic World*, 36.

¹⁸John Hick, "Religious Pluralism and Salvation," in Philip Quinn and Kevin Meeker eds., *The Philosophical Challenge of Religious Diversity*, Oxford: Oxford University Press, 2000, 54.

¹⁹Louis Janssens, *Freedom of Conscience and Religious Freedom*, New York: Alba House, 1966, 119.

Christianity enjoyed this privileged position. Christianity insisted that it was the fullest and most complete revelation of God to Man. If Christianity is true, then other religions cannot be equally true – although they may contain lesser revelations of God that are true. When Christianity was divided by schism and the growth of Protestantism, the Catholic Church assumed an exclusivist position, expressed in the teaching that, outside the Church, there is no salvation.

In modern times, particularly during the height of Marxist and Communist movements, freedom of religion was curtailed in a number of countries. The practice of any form of religion was prohibited and since communism prospered in predominantly Christian countries, Christianity suffered a severe blow to its mission to spread its faith.

Perhaps brought about by the recognition of the disregard for the value of the human person, some thinkers focused on the human person. Gradually, the value and dignity of the human person became an issue in philosophical, social, moral, and political discussions, and many writers and thinkers advocated the recognition of his religious freedom and the freedom of different religions.

One of those first to come out with a clear, authoritative statement on religious liberty was the World Council of Churches (WCC) which was formally established in Amsterdam in 1948. In its first general assembly meeting entitled "Man's Disorder and God's Design," it acknowledged the significance of religious freedom and made official statements concerning it.²⁰ Its Declaration of Religious Liberty states:

An essential element in a good international order is freedom of religion. This is an implication of the Christian faith and the worldwide nature of Christianity. Christianity, therefore, views the question of religious freedom as an international problem...While the liberty with which Christ has set men free can never be given nor destroyed by any government, Christians, because of that inner freedom, are both jealous of its outward expression and solicitous that all men should have freedom in religious life.²¹

²⁰Ho Jin Jun, *Religious Pluralism and Fundamentalism in Asia*, Colorado Springs, CO: International Academic Publishers 2002, 213.

²¹WCC, *Man's Disorder and God's Design*, New York: Harper & Brother, 1948, 1: 186, cited in Jun, *Religious Pluralism and Fundamentalism in Asia*, 213.

The Declaration further holds that religious freedom is the fundamental right of all individuals. It states:

The rights of religious freedom herein declared shall be recognized and observed for all persons without distinction as to race, sex, language, or religion, and without imposition of disabilities by virtue of legal provisions or administrative acts.²²

Consequently, the Declaration established four main guidelines:

1. Every person has the right to determine his own faith and creed.
2. Every person has the right to express his religious beliefs in worship, teachings and practice, and proclaim the implications of his beliefs for relationships in a social or political community.
3. Every person has the right to associate with others and to organize with them for religious purposes.
4. Every religious organization, formed and maintained by actions in accordance with the rights of individual person, has the right to determine its policies and practices for the accomplishment of its chosen purposes.²³

Prior to the WCC Declaration, the Catholic Church had maintained as exclusivist position, based on its dogma and belief that outside the Catholic Church there is no salvation. It assumed that it was the only true religion entitled to propagate the gospel.²⁴ However, there were those in the Catholic Church who contended that religious freedom is fully compatible with the principles of the Church. This thinking culminated with the Vatican Council II, with its Declaration on Religious Freedom (*Dignitatis humanae*). The Council declared:

The human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits.²⁵

²²WCC, *Man's Disorder and God's Design*.

²³WCC, *Man's Disorder and God's Design*, 213-214.

²⁴WCC, *Man's Disorder and God's Design*, 216.

²⁵Vatican Council II, *Declaration on Religious Freedom [Dignitatis Humanae]*, promulgated by Pope Paul VI, December 7, 1965. http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html (29 March 2006).

This right to religious freedom, the Council stressed, is grounded on "the very dignity of the human person as this dignity is known through the revealed Word of God and by reason itself."²⁶ This right of the human person to religious freedom is to be recognized in the constitutional law whereby society is governed and, thus, it is to become a civil right.²⁷ The Council also stressed that "in accordance with their dignity as persons – that is, beings endowed with reason and free will and, therefore, privileged to bear personal responsibility – that all men should be at once impelled by nature and also bound by a moral obligation to seek the truth, especially religious truth."²⁸ The free exercise of religion is grounded on both the personal (or internal) and the social aspect of the human person. The exercise of religion emanates from the "internal, voluntary and free acts whereby man sets the course of his life directly toward God."²⁹ Since no human power can either command or prohibit man's personal acts, no human power can curtail the exercise of religion. But since man is a social being, the exercise of his religious convictions requires that "he should give external expression to his internal acts of religion: that he should share with others in matters religious; that he should profess his religion in community."³⁰ Any action or policy or law that prohibits the free exercise of religion causes injury or harm to the human person and to the very order established by God for human life.

However, the Council acknowledged the fact that just like any freedom, religious freedom could be abused and, therefore, it asserted that "society has the right to defend itself against possible abuses committed on the pretext of freedom of religion."³¹ In this sense, religious freedom or freedom of religion is not an absolute. There are certain limits to the exercise of such freedom.

6. Religious Pluralism and Freedom of Religion

Religious pluralism, then, is a viable option or position to take, given the diversity of religious beliefs or faiths and the right to freedom of religion. Religious pluralism does not grant a privileged position to any religion.

²⁶Vatican Council II, *Declaration on Religious Freedom*.

²⁷Vatican Council II, *Declaration on Religious Freedom*.

²⁸Vatican Council II, *Declaration on Religious Freedom*.

²⁹Vatican Council II, *Declaration on Religious Freedom*.

³⁰Vatican Council II, *Declaration on Religious Freedom*.

³¹Vatican Council II, *Declaration on Religious Freedom*.

Although there are certain irreconcilable doctrines, these are viewed from the perspective that they all pertain to the same ultimate divine Reality. "Central to pluralism is the view of religious traditions as connected, overlapping attempts on the part of human beings to understand and orient themselves towards the sacred."³²

Pluralism does not believe that all religions are equally and unequivocally true, for it recognizes the unique identities of different faiths with their own doctrines.³³ But it presupposes that all major religious traditions are equal with respect to a common reference to a single transcendent, divine reality, and that they are also equal with respect to offering a means to human salvation.

Pluralism, or more accurately normative religious pluralism, maintains that the major world religions provide independent salvific access to divine Reality. The contemporary case for pluralism is argued on several grounds: (1) ethically, as the only way to promote justice in our intolerant and oppressive world, (2) in terms of the ineffability of religious experience, so that no religion can claim an absolute stance, and (3) through the historicist thesis that varying cultural and historical contexts preclude absolutist religious claims.³⁴

Pluralism is not reducible to unity, and does not advance the idea that there will be a universal religion common to all. "Pluralism is a realistic attitude which having realized the irreducibility of the many to unity, tries to embrace the whole without reducing it to the quantifiable sum total of its parts or to a formal unity of whatever type."³⁵

³²Peter Byrne, *Prolegomena to Religious Pluralism: Reference and Realism in Religion*, London: Macmillan, 1995, 13.

³³For example, most Christians believe that Jesus was God incarnate and part of the Holy Trinity, while both Muslims and Jews hold that it is impossible for any human to be God incarnate, and that no Trinity exists. Christians believe that Jesus was crucified and died on the cross, while Muslims believe that Jesus was not crucified and did not die on the cross. Therefore, claiming that both Christianity and Islam are both simply 'true' gives rise to a logical contradiction.

³⁴Okholm and Philips, *Four Views on Salvation in a Pluralistic World*, 17, cited in John Hick and Paul Knitter, *The Myth of Christian Uniqueness*, vii-xii.

³⁵Arvind Sharma and Kathleen Dugan eds., *A Dome of Many Colours: Studies in Religious Pluralism, Identity and Unity*, Pennsylvania: Trinity Press International, 1999, 31-32.

Nor is it irrational, leaving reason behind and simply clinging to one's faith. "Pluralism is a rational effort which leads us to discover intellectually the very limit of reason, because of the factual impossibility of reducing everything to unity."³⁶ Hence, while it rejects 'rationalism', it does not abandon rationality.

Pluralism is not relativism. All it avoids is the absolutist stand which is tantamount to exclusivity. Pluralism recognizes the mutually incompatible lifestyles and contradictory doctrines. It recognizes each person's conviction of the goodness of one's lifestyle and the truth of one's doctrines. However, it takes away the sting of absolutism, precisely because of the experience that everyone is limited and not absolute.³⁷ The pluralist, therefore, does not give up his personal convictions, but he does not absolutize them.

Pluralism acknowledges that there are belief systems, worldviews, philosophies, or religions that are mutually incommensurable and, thus, encourages the dialogue between such systems or religions. It promotes the need for inter-religious dialogue to discover common bonds and realize that all religious people participate in Ultimate Reality. Religious pluralism entails not competition but cooperation, and shows that societal and theological changes are necessary to overcome differences among religions. The focus is not on the differences but on the beliefs that are common to all.

The human person has the basic right to the free exercise and expression of his religious beliefs. Consequently, a community of persons expressing a common set of religious beliefs must be accorded the freedom to exercise its religion. The basis for this, as mentioned in the Vatican Council Declaration on Religious Freedom, is the dignity of the human being, a dignity based on the fact that man was created in the image and likeness of God, an "*imago Dei*." Further, "religious freedom is concerned with man in the social and juridical order. It is concerned with him in his relation to other men as he exists in a society, structured, organized and regulated as it is by laws, institutions and practices."³⁸

³⁶Sharma and Dugan eds., *A Dome of Many Colours*, 32.

³⁷Sharma and Dugan eds., *A Dome of Many Colours*, 31-33.

³⁸Vincent Grogan and Laurence Ryan, *Religious Freedom in the Teaching of the Second Vatican Council and in Certain Civil Declarations*, Dublin: Scepter Books, 1967, 8.

Since man's right to religious freedom is based on his dignity as a human being, and not on the content or nature of his religious beliefs and practices, he still retains his dignity whether his religious beliefs are true. Consequently, all men have the right to religious freedom regardless of whether their religious convictions are true or erroneous.³⁹ On this ground, no limit may be set to the right to religious freedom on the grounds that a particular religious conviction, belief or practice is false. Moreover, the question whether a particular religious belief or conviction is true is outside the competence of civil authority.⁴⁰ In short, no organization or institution, whether civil or religious, should pass judgment on the truth and validity of religious beliefs or convictions.

The exercise of religious freedom, however, must be done responsibly. Every freedom has its corresponding duties. In exercising this freedom, men must respect the rights of others. Religion cannot be used as a reason to cause harm or injury to other individuals or groups of individuals.

7. Conclusion

Religious pluralism is the proper attitude that promotes religious freedom and freedom of religions. It encourages respect for the free expression of one's religious beliefs and respect for the right of each person to associate with others and to organize with them for religious purposes. Religious pluralism is the proper attitude that recognizes the right of religions to determine their policies and practices for the accomplishment of their chosen purposes.

Respect for religious freedom and freedom of religion can, however, be attained only if there are mutual respect and understanding for the truth-claims and validity-claims of various religions. This respect and understanding cannot be only on the cognitive or epistemic level. They must be attitudinal and experiential. Religious pluralism cannot just be at the doctrinal, epistemological, and cognitive levels. It must be practised and be felt in concrete human experience.

A pluralism that acknowledges and respects the diverse religious systems, doctrines, and beliefs alone can guarantee religious freedom and freedom of religions. Such pluralism is, therefore, a fertile ground for dialogue and harmony among religions.

³⁹Vincent and Ryan, *Religious Freedom*, 9.

⁴⁰Vincent and Ryan, *Religious Freedom*, 11-12.

RELIGION AND THE AMERICAN FRAMING

Stephen F. Schneck♦

1. Introduction

I think that, for those outside the United States, the way that Americans consider and wrestle with the role of religion for politics, governance, and public life must seem strange. In some sense, it seems that religion is everywhere in American public life. President Bush, for example, like all previous presidents, took his oath of office on the Christian Bible. American money, since 1952, has been stamped with the fiduciary assurance, "In God We Trust." American politicians, of all stripes, reflexively reference God, salvation, and their 'private' religious beliefs. Nevertheless, in contrast with many European countries, Americans do not indicate on state documents that they are Protestant or Catholic or other denomination. The national and state governments are prohibited from funding or supporting churches, religious schools, or providing salaries for pastors. In American schools, unlike well-known cases elsewhere, a Muslim teacher may wear her veil and a Jewish schoolboy his yarmulke without problems or commentary. So, perhaps from abroad, these American behaviours do seem strange.

2. Battle of Ideas

Indeed, the situation is surely becoming more to understand, especially for those who might be considering the United States from abroad. Because, at the moment, a battle of ideas is waging in American politics about the place of religion. Some conservatives, especially in the Republican Party, are insisting on religiosity as a litmus test for political legitimacy. President Bush, in this light, has promoted or endorsed many religiously-oriented programs and policies, including limits on abortion and stem-cell research, "faith-based initiatives" for church/state cooperation in areas like healthcare and social welfare, and many policies associated with the so-called "culture of life" (terminology borrowed from the papacy of John Paul II by some Republican activists). Some analysts of American politics

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have even noted an interesting coalition forming in the United States between evangelical Protestants and Roman Catholics that may become a central element of the Republican Party's long-term electoral strategy. Moreover, reflecting such rising importance of religion in American politics, an increasing insistence is heard in American public life that the source of the legitimacy for the American regime itself derives from a religious foundation. Increasingly, especially from political conservatives, is heard the assertion that the American "founding fathers" and the "framers" of the 1787 Constitution had intended to found a Christian nation in order to advance toward a final Christian purpose.

As can be imagined, this conservative understanding is contested. The reaction from both liberals and "seculars" to this claim about the American origin has resulted in something of a war of ideas about the question of religion for the founders and framers. The contending claim is the reverse – that the American regime was established on a secular basis. Reading the founding documents and the writings of the founders and framers from this perspective, seculars and liberals find not Christian beliefs or religion but, instead, only deism and a thick wall between church and state. For the seculars are found authors like Isaac Kramnick and R. Laurence Moore, authors of *The Godless Constitution*.¹ For the religionists are authors like Michael Novak, author of *On Two Wings: Humble Faith at the American Founding*.² A war of ideas, a battle of interpretations, indeed!

What the American founders and framers actually thought about religion and public life, given the documentary record, is, however, both more complex and more difficult to discern than most battlers in the contemporary war of ideas seem to appreciate. The official documents of the founding and framing of the regime offer scant help for resolving this war of ideas. The Constitution of 1787 says nothing about God, and mentions religion only to warn against imposing religious qualifications for public service or holding office. Likewise, the 1781 Articles of Confederation – the United States' first constitution – has nothing in it about religion. The lengthy and theoretically rich Federalist Papers, written

¹Isaac Kramnick and R. Laurence Moore, *The Godless Constitution: The Case Against Religious Correctness*, New York: Norton, 1997.

²Michael Novak, *On Two Wings: Humble Faith at the American Founding*, Expanded Edition, New York: Encounter, 2003.

by James Madison, Alexander Hamilton, and John Jay to promote the Constitution, also say nothing about religion save to warn the young country against the danger of religious strife. Only Thomas Jefferson's 1776 Declaration of Independence (the revolutionary manifesto meant to announce the American colonies' separation from Great Britain) mentions God, but even here does so only to account for an idea of natural rights. The first of the amendments to the Constitution, included in the 1789 Bill of Rights, does indeed speak of religion, but only to warn the American Congress against attempts to establish a national religion or to interfere with private religious practices. Missing from all of these founding, official documents is discussion of the positive role that religion might play in a republic, which precisely is the point of contention in today's war of ideas.

Given these official documents, then, we might, in fact, find support for today's seculars who see scant attention paid to religion during the founding of the American regime. Additional support for such view might be gleaned from the fact that – contrary to many accounts – Americans currently are more religious than their early American forbearers. Statistically, more citizens believe in God now than at any time in the country's history – more than 90% according to a recent Fox News poll. It should also be noted that the years of the framers and founders were a period of lower religiosity, occupying something of a trough between the two Great Awakenings when religious fervour was high. The first of these Awakenings occurred in the decade of the 1740s, while the second emerged about the time of the War of 1812 and lasted for about a dozen years. The epoch of the revolution, founding, framing, and first years of the new regime was one of lower religious intensity. So, the contemporary conservative argument for the religiosity of the framers and founders can perhaps rightly be chided by those seculars who would indict the religionist conservatives for projecting present day religious sentiments upon the founding generation.

Yet, at the same time, the account given by religionist conservatives of the role of religion for the founders and framers also can find validity in the historical record. Religion was quite important for the nearly all the leading figures of the revolutionary and framing generation. As demonstrated unmistakably in their private correspondence, many of these men found religion to be central in their understanding of what they were about as revolutionaries, founders, and framers. Moreover, especially

outside the circle of those promoting the 1787 Constitution, the argument was made by several of the so-called Anti-Federalists (those opposed to the Constitution) that religion was needed to form the virtues in the citizenry that republican government required both to curb factional self-interests and to promote the common good. Indeed, this is an argument (albeit from a problem source) that supports today's religionist conservatives.

So, where does this leave things? Were the American framers in favour of religion informing or grounding politics, governance, and civilization? Or not? Were these revolutionaries and regime founders as inclined as contemporary American politicians to invoke their religious beliefs in their considerations of policy or administration? Or not? Perhaps both of these conflicting, contemporary interpretations – secularism and strong religionism – are somewhat supported, leaving only a paradox that is both confusing and unhelpful.

Yet, it might better be said that both of these (arguably) extreme interpretations of the framers are problematic. Indeed, my contention – and this is the central argument of these remarks – is that those who see in the framers either ardent religionists or ardent secularists are worrisomely simplifying the thinking of that era. Neither of these mutually exclusive interpretations is accurate. The books and articles of contemporary authors who insist on one side or the other of this matter are as much polemic and beholden to contemporary sensibilities as they are scholarly.

In fact, the framers and founders had many different ideas among themselves concerning religion and political life. They were divided and conflicted among the many intellectual currents of the period. Moreover, even given the differences, few among this generation can easily be fit into one or the other of the polarized interpretations of the question that have come to dominate contemporary discussions.

3. Four Types

To get a sense of the complexity of the thinking about the role of religion for politics and governing in eighteenth century America, it might be best understood in terms of four ideal categories or types: 1) secularism, 2) separationism, 3) civil religionism, and 4) sacerdotal religionism.³

³The typology and terminology represent the author's contemporary analysis. Such terminology is not found in the eighteenth century.

Secularism is, to some extent, anti-clerical. According to thinkers and writers in this category, religion should have no authoritative role in political or public life. The state, ideally, must oppose all public religious expressions. Instead of religious values, secular values are appealed to as the basis for politics, governance, and participation in the civil order. Moreover, the state advocates and promotes these same secular values. In the United States of the eighteenth century, secularism was overlaid with a deist understanding of reality, with the sense that, while God existed, the affairs of humankind (especially, government and politics) were beyond active divine concerns. In the nineteenth century, secularism became a prominent feature of the approaches of many European states to questions of foundational values for the political order.

Separationism, the second type, is importantly different from secularism, because it does not allow the state's endorsement of official, secular values. Indeed, in separationism, no value system – secular or religious – is promoted. Government, politics, and political life are ostensibly “separate” from such bases. The state, as a result, is obliged – however successfully or unsuccessfully – to remain pluralist, neutral, and objectively distant from (and not interfere with) whatever actually informs citizens' values.

Civil religionism, the third type, begins with an appreciation of the utility of religion for supporting governmental, social, or political ends. The political order uses religious elements to construct a civil religion, which is used to promote patriotism or nationalism for state support or public order. Similarly, civil religion can help to inculcate civic virtues that many theorists have argued are crucial for republican government. As with each of these types, varying thick and thin versions of civil religionism might be imagined, with its thick, single denominational version being very powerful. The civil religionism of eighteenth century America was, however, a thin and non-denominational version. A vague, general, Protestant-flavoured civil religion was advocated to help contest citizens' centripetal regional, state, and denominational identities with a new, unified, national American identity. Generic Protestant symbols, metaphors, language, and rituals were evoked in political practices to facilitate this. In this fashion, the experience that citizens have of the state is reminiscent of citizens' religious experiences associated with reverence, divine authority, and universal purpose.

The last type, *sacerdotal religionism*, reverses the arrangement of civil religionism. Instead of religion serving state purposes, here the state and the political order are understood to serve religious purposes. The thick form of this type is theocracy – such as what developed in Puritan New England in the seventeenth century. However, thinner forms of sacerdotal religionism are the norm. The key distinguishing feature, however, is that the state is perceived as essentially a tool for religion.

Arguably, this typology helps clarify the complexities of the framers' and founders' thinking about the role of religion for the political order. A few case studies and examples of these types in eighteenth century America are revealing: first, the less common types (secularism and sacerdotal religionism), and then, the more important types (civil religionism and separatism).

4. Secularism

In 1784, the hero of the pivotal battle of the Revolutionary War at Ft. Ticonderoga, Ethan Allen, wrote a book, entitled, *Reason the Only Oracle of Man*, which best can be described as a manifesto for Enlightenment Deism.⁴ The title explains much. Allen rejected the idea of a God as a person. He denied religion, miracles, the devil, and prayer. In place of such things, he recognized only a holy process at work in human and natural history, which he called Reason. He declared, moreover, that the American Revolution heralded an ultimate point in this process. It marked a break from faith, belief, superstition, and the accompanying repression of the human mind. It marked the start of a new order for the ages (*novus ordo seclorum*) of human liberty, reason, and freedom of thought. Civilization and the state would now be, he suggested, established on rational and scientific principles. In the vanguard of the holy process, America would be an order characterized by a science of civilization, a science of ethics, and a science of the state.

Reason the Only Oracle of Man was, however, not widely embraced by the generation of the American framing and founding. Indeed, in its own day, it was something of a scandal. Ethan Allen had great difficulty finding an American publisher for the book. When one was finally found in Connecticut, the printing was disrupted several times by vandalism and

⁴Ethan Allen, *Reason the Only Oracle of Man or a Compendius System of Natural Religion*, Whitefish, Mont.: Kessinger, 2003.

fire. After being published, the book was denounced from many pulpits in New England and derided in many comments from leading political figures, including some framers.

In France in 1784, such notions as Allen's were somewhat common and accustomed. Moreover, this is precisely the time that Immanuel Kant in Königsberg was writing his own ethics of reason. But the Enlightenment in America had its roots, not in France, but in Presbyterian Scotland and, thus, was not marked by the anti-clericalism of continental Europe. With the exception of Allen and some few others, like the renowned revolutionary propagandist, Thomas Paine (who in 1794, but in France, published the first volume of his *Age of Reason*), none of the prominent "founding fathers" or framers seems to fit into the category of what has here been labelled secularism.⁵ Those who argued for establishing a secular, non-religious value order, such as Allen's, were very much a small minority in this generation.

Contemporary authors, such as the aforementioned Isaac Kramnick, surely err when they portray the constitutional framing and revolutionary founding periods largely in terms of secularism. Of course, today secularism has become more prominent among the arguments for what values should inform the political order. But, even currently few Americans subscribe to the thick version of this category and almost no politicians would fit this type, if we are to judge by their public language. Secularism has never evidenced a level of support in the United States that it has traditionally enjoyed in Europe.

5. Sacerdotal Religionism

If secularism is at one end of the spectrum of this typology, then sacerdotal religionism is at the other. This version of religionism, indeed, stands directly counter to secularism. Yet, like secularism, it has become a prominent and perhaps the dominant contemporary interpretation of the question of religion and politics for the American framing and founding. Unlike secularism, though, which had scant support in the eighteenth century America, a good number of framers and founders leaned in the direction of this type of religionism. That support was not, however, as strong among the framers themselves as among the Anti-Federalist opponents to the 1787 Constitution, several of whom were concerned that

⁵Thomas Paine, *The Age of Reason*, Whitefish, Mont.: Kessinger, 2004.

the document and its apologists did not invoke God or religion. Patrick Henry – famous for the Revolutionary War declaration, “Give me liberty or give me death!” – was one of the more well-known Anti-Federalists who might accurately be located under this type.

To be accurate, though, sacerdotal religionism should itself be divided into two groups. The difference between the two groups is more than one of thick and thin intensity. For example, the larger number of these religionists merely wanted to establish in the United States an arrangement between church and state that was parallel to that found in the eighteenth century Great Britain. Just as the king was head of the Church of England and appointed high church officials, and just as the English state was lent sanctity and legitimation through its official support from the church, so too in post-revolutionary America some argued for a single religious denomination to be recognized for individual states or even the whole nation. Governors or the President would enjoy religious powers like the king and high religious leaders would hold a quasi-public office. Among the founders and framers Timothy Dwight of Connecticut, Benjamin Rush of Massachusetts, Luther Martin of Maryland, and Patrick Henry of Virginia might be counted among religionists in this group.

But, in many ways, the other sacerdotal religionist group is more interesting. This second group might well be called “neo-Puritan,” and not only because it was largely a New England phenomenon. For the neo-Puritans the Revolution, American independence, and the establishment of the government of the United States were conceived as divinely inspired. Through the Biblical metaphor of the “city on the hill,” these religionists contended that America was not like other nations and states. They saw America as a New Testament reincarnation of ancient Israel, with its citizens as a new chosen people entrusted with laying the foundation for the New Jerusalem that is associated with the Second Coming. They maintained that the state and the political order should serve this divine plan. Notable among these neo-Puritans were the Congregationalist preachers Nathaniel Niles of Vermont and Fisher Ames of Massachusetts. Niles was an officer during the Revolution. Both Niles and Fisher served as Members of Congress.

One fascinating illustration of neo-Puritan fervour comes from Niles’s service in the Revolution. In the days before their disastrous Battle of Montreal, Niles gathered with a select group of other officers of the Continental Army in a church near Boston. Together these zealous officers

dug up the body of the famous preacher of the first Great Awakening, George Whitefield, that was buried beneath flagstones. In a prayerful ritual, Niles took the clerical collar from Whitefield's corpse and, in a kind of communion, broke the white collar into pieces which were distributed to all the officers. Treating their Protestant relics reverently the officers subsequently carried them against their chests as they marched toward Canada with the vision of victory over Catholic Montréal.

As this vignette suggests, Niles, Ames, and others of this group of sacerdotal religionists perceived the Revolution and the framing as inseparable from their chiliastic religionism. America represented the penultimate stage of providential history, foundational for the Second Coming, and its politics, authority, and public life were understood as instruments of the unfolding of such Providence. Supporters of this variant of religionism advocated, among other things, religious tests for voting and public office, substantive religiosity in public policy, enforced religious education, officially endorsed religious denominations, and even (a bit later) religious political parties.

Curiously, just as was the case with secularism, the influence of sacerdotal religionism is stronger in contemporary American politics than it was during the founding and framing period. Today such thinking has significant support among Evangelicals, Latter Day Saints, and similar American religious movements.

6. Contemporary Polarity

It might be a bit of an overstatement, but in many ways the current battle of ideas about religion and politics in the United States seems to have organized itself around the extremes of what I have here called secularism and sacerdotal religionism. Despite their obvious difference, moreover, both of these extreme accounts – inspired as they are by true believers' zeal – grant little room for accommodation. Both of these contending interpretations are more ideological than pragmatic. Very importantly, both are chiliastic. I mean by this that both accounts perceive in their ideal of America an "end of history" to be realized. Both Nathaniel Niles (the sacerdotal religionist) and Ethan Allen (the secularist) were convinced that the establishment of the United States ushered in a final historical epoch. Niles's version anticipated the Second Coming, while Allen's was the famous secular "*novus ordo seclorum*."

Hence, the contemporary battle of ideas – largely defined by such polarized positions – looks to anoint an authoritative interpretation of the American framing and founding that would advance one or the other of these chiliastic visions. This is not merely a battle of academic concern, inasmuch as the struggle has overflowed in recent years into American politics and has influenced both domestic and foreign policies. It bears repeating, then, that neither of these two extreme interpretations was widely supported during the founding and framing period. The great majority of the leaders of that generation, instead, can better be located under the canopy of the other two types, civil religionism and separatism. When the question of religion and public life was wrestled within America of the eighteenth century, it was predominantly within the framework of these more attenuated and nuanced types, and not within the parameters of today's more polarized extremes.

7. Civil Religionism

Arguably, civil religionism as a category captures the greatest number of prominent framers and founders. The very religious John Adams fits here. So, too, does the weakly religious Benjamin Franklin. George Washington belongs in this type, as also Alexander Hamilton (even though after he was disgraced by an extra-marital affair, Hamilton, too, thought of beginning a religious political party). Included here are infrequent church attenders as well as the very devout. What, then, it might be asked, does this type stand for? The central idea of civil religionism might be clarified from three perspectives: cultural identity, national unity, and civic virtue.

Regarding identity: if I remember my history correctly, German national identity was developed from "above." A national language, literature, mythology, and so forth were fashioned by leading intellectual figures such as Herder, Hamann, and Goethe. In post-revolutionary America, and in some contrast, many of the framers and founders thought that a non-confessional or generic Protestantism could be employed in a similar fashion to give the regionally-divided Americans a common identity. Benjamin Franklin, for example, thought so.

Regarding unity: a serious worry among the framers was the developing religious tensions and divisions in the young United States, which threatened national unity. In the decade of the 1780s, for example, the traditional Protestant denominations (such as the Congregationalists, Presbyterians, and Episcopalians) were declining as a percentage of the

population. At the same time new denominations were experiencing rapid growth, especially the Methodists and Baptists. The tensions that emerged (marked in some cases by outright persecution) between the new and old denominations had worrisome political overtones. Indeed, by the 1790s the Methodists and Baptists were closely leaning in favour of what would become the Jeffersonian Republican political party, while the Congregationalists and Presbyterians supported the Federalist party of Adams and Washington. As a response to these tensions, some (Alexander Hamilton, for instance) saw an advantage in the state developing a thin, non-denominational but Protestant civil religion to transcend such denominational divisions.

Regarding civic virtue: a widespread idea among the framers was that religion – any religion, really – was very useful for the inculcation and promulgation of those virtues in the citizenry that were deemed crucial for the success of republican government, such as civic participation, regulating private interest for the public good, supporting rule by law, respect for minorities, and even independence and hard work. Religion properly encouraged could also work, moreover, to invoke reverence for the idea of the nation itself, thereby strengthening patriotism, nationalism, and American exceptionalism. Nevertheless, great care needed to be taken to avoid associating such civil religiosity with any specific denomination, since denominational difference were so acute and so doing would only add to the divisiveness. Hence, once again, but from this different perspective, the civil religionist framers came to advocate a vague, generically Protestant religiosity for political ceremonies and public life. George Washington's famous Farewell Address (written in part by Madison and Hamilton) is illustrative of such efforts.

Washington himself did much to advance such a pragmatic use of religion, despite his own personal complicated religious feelings. It was more than rhetoric. He proclaimed a national day of prayer. He allowed ministers to open meetings with his Cabinet with prayers. He took his oaths of office on a Bible held by an Episcopalian bishop. His intention in all of this was to link the new state with the religious sentiments of America's citizens.

8. Separationism

While it is likely that a majority among the framers probably belongs under the civil religionism, a large minority can be located under

separationism, according to which the state and political practices should function independently of direct religious involvement. Thomas Jefferson, the author of the Declaration of Independence, and James Madison, the so-called "father" of the Constitution, and many others in this vein were convinced that the state's legitimacy depended upon a separation from institutional religion. Adherence to these two types (separationism and civil religionism), furthermore, waxes and wanes during the subsequent years and, although the numbers can never be sorted out with certainty, with Jefferson's presidency it seems likely that separationism became the majority understanding of the role of religion for public life.

Importantly for present concerns, separationism needs to be carefully distinguished from secularism. The historical narrative within which Jefferson first pens his oft-cited "wall of separation" between church and state speaks to this. In January 1802, during his presidency, Jefferson received a gigantic cheese from the Methodist community of Massachusetts. The cheese, reputedly, weighed about a ton and a half and was emblazoned in red with the words, "Rebellion against Tyrants is Obedience to God." The cheese had been sent to Jefferson to highlight and protest the civil rights discrimination that minority denominations (like the Baptists and Methodists) endured in states where a majority denomination had been established as the official church – like Massachusetts. On this same day, Jefferson wrote his famous letter to the Baptist community of Danbury, Connecticut, wherein he insisted that a "wall of separation" must stand between church and state. Hence, the giant cheese and Jefferson's wall must be understood together. The situation of the Methodists in Massachusetts inspired Jefferson's letter to the Baptists in Connecticut. The wall of separation itself needs to be understood against this historical backdrop. The wall, ideally, should serve both to protect religions from state interference (of the sort the Baptists and Methodists were experiencing in New England), as well as protecting the state itself and the political order from the enormous dangers of the sort of religious divisions that the giant cheese was meant to highlight.

The words of the First Amendment to the Bill of Rights of the American Constitution (written by James Madison in conjunction with George Mason in 1789) echo Jefferson's later "wall of separation" sensibilities. Madison's language there has two clauses concerning religion. Much like Jefferson's worries about the situation in New England, the first clause of the amendment forbids the national state from

establishing any religion. The second clause, however, also insists that the state does not interfere with the free practices of any religion. Congruent with separationism, in other words, the practice of religion is good, but the state cannot legitimately promote it.

Madison's and Jefferson's most important and fulsome elaboration of separationism, however, is found in their long collaboration in crafting the Virginia Statute for Religious Freedom. The statute was developed first by Jefferson in his writing of the revolutionary constitution for the State of Virginia during the Revolutionary War, but only much later and following much work by Madison was the statute finally passed in 1787 – and remains today a celebrated part of Virginia law. The logic of separationism is laid out in the train of that statute's argument. The logic of the argument runs as follows.

- Religious freedom is imperative, because God created the human mind free.
- The stronger religious truth becomes, then the stronger are the civic virtues necessary for republican government.
- Religious truth can only become stronger in an open, competitive, and free process of ideas and values.
- Finally, if the state involves itself in religion or if religion involves itself in the state, then, the free process of strengthening religious truth is compromised and the development of civic virtue is undermined.

Plainly, Jefferson and Madison hoped that their “wall” served to protect the process they describe so well in the Virginia Statute.

9. Conclusion

The lines of the debate about the role of religion for the political order and about the proper relationship of church and state during the early years of the American regime are best understood as between separationism and civil religionism.

On one side, we find Jefferson and Madison and, on the other, we find Washington, Adams, and Hamilton. Both sides were in agreement regarding many things. They agreed about the usefulness of religion (among other things) for developing civic virtue. They agreed also about the need to avoid the religious strife that had proved so destructive in so many historical cases. They agreed about the dangers of mixing strong, substantive religion with politics. Both sides, moreover, agreed on the

transcendental value of religion itself. Perhaps, too, both sides agreed that the way to proceed in considering the role of religion for political life was cautiously, pragmatically, and incrementally.

What emerges from the debate between these sides in the eighteenth and the early nineteenth centuries was in part a compromise (or, put perhaps better, a *détente*) and in part a fruitful tension in American public life that has been wrestled with in every succeeding historical period. In our own time, though, this fruitful tension and *détente* has been lost, as have the lines of the debate between separation and civil religion. In contemporary America, instead, we have, I fear, only a war of extremes, between a militant secularism and a militant sacerdotal religionism. Such a war is at odds with general spirit of the American framers and founders.⁶

⁶The present essay is the author's translation of a speech given at the University of Eichstätt, in Bavaria, Germany, to the Institute of Political Science, on 21 June 2005.

THE NON-DISCRIMINATORY STATE

Toward a Model of Church-State Relationship and Freedom of Religion in Nigeria

Pantaleon Iroegbu*

1. Introduction

The Church embodies and expresses the religious aspects of human life. Religion, which the Church makes concrete, relates a human being with the supernatural. As a lived reality, religion is both private and public. The State, on its part, articulates and underscores the socio-political spheres of human needs and preoccupations. Since both are concerned with the well-being of those same human beings in society, the Church and the State, therefore, must enter into a co-operative relationship. What this comes to is that there must be a proper relationship between the religious sphere which the Church represents, and the socio-political arena embodied by the State. Hence, there is the need to determine the appropriate link that should exist between the State and the Church. That is the task of this essay: to propose the thesis that it is *not* in remaining neutral (or what is conventionally called being secular *vis-à-vis* religious matters) that the State plays its appropriate role. It is rather in treating appropriately the various segments of religion in its territory, that is to say, that the State should not be neutral as if unconcerned, but non-discriminatory.

The view that will be defended here is that the principle of non-discrimination is the best policy and relevant praxis that would maintain a healthy balance in Church-State relationship, especially in African nations. When correctly applied, this principle respects the status of both institutions. At the same time, it realises the maximum welfare of all individual persons-in-community. To show this, I will first discuss the Church-State relation, next, religious freedom and conflict (particularly in the African context), then, the secular state, and finally the non-discriminatory state.

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2. Historical Background of the Church-State Relationship: Praxis of Hegemony

For much of history, and especially in their early days, the Church and the State have been in constant conflict about who will have the last word, which will be subject to the other, who will have hegemony over issues that matter in life, in a word, who will wield the higher authority? The great French scholar Jacques Maritain expressed the foundational grounds for the age-long tension between the Church and the State in the following words: "In medieval Christendom, the temporal actually often had the simple role of means, a simple ministerial or instrumental function in relation to the spiritual."¹ Earlier, in the classic text *The City of God*, Augustine argued for the "City of God," which is the spiritual realm of reality, in contrast with the "City of the World," the temporal sphere. In what has come to be known as Political Augustinianism, this ancient but influential argument not only encouraged the conflict, but brought disdain on the temporal order: the world, politics, and socio-civil life.² In short, what is evident in the long history of Church-State relationship is the struggle by both for power, authority, supremacy, but ultimately for survival.

In his *Essays on Church and State*, Lord Acton writes that the struggle between the Church and the World resolved itself into a contrast between the Church and the State, the priesthood and the empire; neither thought it could secure its rights and respect those of the other, and each

¹J. Maritain, *Integral Humanism: Temporal and Spiritual Problems of a New Christendom*, New York: C. Scribners and Sons, 1968, 176. See also Maritain, *Man and State*, Chicago: University of Chicago Press, 1976.

²Augustine, *The City of God*, trans. Henry Bettenson, Middlesex: Penguin Books, 1972, parts 1 & 3. Note that the enunciation of the formula of double, or better, separated allegiance by Christ in the New Testament – that one should render to Caesar what is Caesar's and to God what is God's (Mt. 22:21) – did not solve the problem of conflict of allegiance. For though the statement positively separated the two powers to a certain extent, it did not, and cannot in advance, specify concretely in all cases, what belongs to Caesar and what belongs to God. It is human beings who must decide, and in many cases the conflict was more than material. For instance, should the Jews pay homage to Caesar as Roman Law demands and at the same time worship Jahweh as the Torah commands? Should the African Traditional Religious adherent worship both his/her local divinity and equally venerate the High God now introduced by the Christian Religion as Supreme? Syncretism in many places is the evidence of the ongoing tension.

conceived that it was safe only if it was predominant. Acton concludes his remarks by stating that the notion of the superiority of the ecclesiastical power ripened into the notion of the worthlessness of the civil power and of the derivation of its authority from the Church.³

The long struggle for supremacy yielded various models of Church-State relationships. We distinguish them here into two broad groups. The first are those Hegemony models in which one party tried to dominate or even assimilate the other. Here we find Caesaropapism (State domination) and Hierocracy (Church domination). The second group of relationships are the separation or autonomy models, in which we get Pure Separation, Hostile Separation, and Co-ordination (Partnerships and Concordats). It is in the context of the Separation model that the autonomy of Church and the State, and further the issue of Neutrality or Secularity of the State, come into play. Before we proceed to examine the Separation model (in Section 3 of this paper), we shall look into the Hegemony model represented in our grouping by Caesaropapism and Hierocracy.

The intuitive idea behind both Caesaropapism and Hierocracy is the belief that God meant all humanity to become an *Ecclesia Universalis*, otherwise known as Christendom. Such Christendom is to dominate the entire universe and become a *Repubblica Christiana* or Christian Commonwealth. Hence, in this theocratic monism (or what D. J. Herlihy describes as "theocratic world monarchy under absolute papal power"⁴), there has to be unity of Faith, similarity of Morals and correspondence of Worship under one administrative arrangement with Pope as the Supreme Head. The principle was thus: One World, One Faith, One Church, and One State. This is Christendom. But it had a great challenge: Caesaropapism.

2.1. Caesaropapism

Caesaropapism is the system of government in which "the supreme royal and sacerdotal powers are combined in one lay ruler."⁵ Literally, Caesaropapism means "Caesar playing the Pope." It is such a system that

³Lord Acton, *Essays on Church and State*, New York: Thomas Y. Crowell Co. 1968, 112.

⁴*New Catholic Encyclopedia*, 1967 edition, s.v. "Church & State," by D. J. Herlihy, 732.

⁵*New Catholic Encyclopedia*, 1967 edition, s.v. "Caesaropapism," W. Ullman, 1049.

so unites the two powers that the emperor or king is at the same time, *de facto* or *de iure* the head of the Church. In such cases, the Church becomes an *Instrumentum Regni* (instrument, organ or branch of civil government). This was effectively the case, for instance, after Constantine the Great was recognized as the first Christian emperor (though he was baptized only on his deathbed in 337); after the Edict of Milan (313), Constantine became more active in religious affairs and, in 325, summoned the Council of Nicea. Pursuing the same line, the Roman Emperor Theodosius declared Christianity the 'Religion of the State' (380).

Soon, however, the Church was to suffer the negative effects of this move. The Roman emperor had the title *Pontifex Maximus*, with all the combined ultimate power of a *pantocrator* (one possessing absolute power). This resulted naturally in the emperor becoming an *autocrator* (dictator or absolute monarch). (Church Fathers like St. Ambrose [340-397] had to oppose it vehemently, and the title was eventually given up by the Emperor Gratian in 382.⁶) Still, the Emperor (of the Eastern Empire) Justinian (527-565) was to regard himself as "priest and king," at the cost of dogmatic and canonical disorders. Clearly, the authority of the Church was compromised by Caesaropapism in dogmatic, administrative, and legal issues. There had to be reactions against Caesaropapism, as it had led to the Great Schism of 1054.

2.2. Hierocracy

From the Greek *hieros* (sacred), hierocracy is the system that makes the religious leader also the head of government. It is the opposite of

⁶*New Catholic Encyclopedia*, 1967 edition, s.v. "Caesaropapism," W. Ullman, 1049ff. An extended model of the Caesaropapism system is *Jurisdictionalism*. It is a claim, justified by the need for order and unity in the polis, that the State has such jurisdictional authority and power over the Church that it can declare the Church to be a State Religion or a National Church. With such a declaration, it can, therefore, have easy access to control the Church and interfere in ecclesiastical matters and laws. In the further species of *Regalism*, the State leader has power to declare which Church its members would adopt, almost certainly the one favoured by the Ruler himself. This would mature later in the Protestant principle of *cuius regio eius religio* (the religion of the King becomes the religion of his people). In the situation of Jurisdictionalism, the Church, as Marsilus of Padua (1275-1343) put it, is devoid of any character as society and has become a mere function of the State. See H. Jedin ed., *Handbook of History*, London: Burns & Oates, 1970, 2: 363.

Caesaropapism and is a species of *theocracy* (divine ruler). Theocracy, as well as its species hierocracy, can be direct or by God's representatives or ministers on earth. In hierocracy, while there is recognition of the State and State functions, these are subordinated to the religious leaders. In this system all authority flows from one source. In cases of conflict it is the Church authority that has the final say. As Paul Mikat writes, "The hierocratic theory itself affirmed the autonomous jurisdiction of the State, and the Pope's duty to pass on the temporal sword."⁷ This means clearly that the Church represented by the Pope has a higher if not absolute authority *vis-à-vis* the State represented by the King or any other ruler.

Nevertheless there is a proviso. The power of the Pope is not all-pervasive or unlimited. The scope of the power of the Pope is in *ratione peccati* (salvation at stake). This means to say that the Pope acts absolutely against the State when salvation is at stake. Salvation, thus, gives papal power its legitimacy. This is justified by the fact that of the two powers (otherwise called the two swords), the spiritual is superior to the temporal. As ecclesiastics like Gregory of Nazianzus and John Chrysostom would put it, just as heaven is higher than the earth, the sun brighter than the moon, and gold more noble than lead, so is the Church superior to the State. While the State is of this earth, the Church is of heaven. This Church which is supernatural has, therefore, the last word in unified Christendom.⁸

There, thus, developed what scholars have called Pontifical Theocracy during which Popes deposed Kings. In 1076, for instance, Pope Gregory VII excommunicated King Henry IV (1056-1106) and made Henry carry out what Herlihy calls a humiliating penance at Canossa.⁹ The principle of Pontifical Theocracy also justified punishing erring Rulers and made Lords pay homage to the Church leaders as their superiors.¹⁰ The Church focused on the welfare of the universe and, thus, demanded the necessary power and wherewithal from everyone, including the State. This

⁷P. Mikat, "Church and State," in K. Rahner ed., *Encyclopedia of Theology: Concise Sacramentum Mundi*, New York: Seabury Press, 1975, 230.

⁸Among other documents of authorities that make strong cases for Hierocracy, see Pope Innocent III (1198-1216), *Plenitudo Potestatis*; Pope Boniface VIII, *Unam Sanctam* (1302).

⁹*New Catholic Encyclopedia*, 1967 edition, s.v. "Church & State," 730.

¹⁰For more on this see S. O. Eboh, *Church-State Relations in Nigeria*, Rome, 1984, 12-13.

is expressed by Herlihy in the following observation of the situation at the time:

The Papacy through its universal authority, provided unity and direction in the work generating Christian Society. Kings had to follow the leadership of priests and to place their swords at their service; to oppose them was to merit reprimand, excommunication, and even deposition.¹¹

At the time, then, Church and State struggled for power, for hegemony. With time, however, it was gradually realised that a superiority complex and domination instinct may not be to the greatest advantage of either power. Above all, it worked against the realisation of the common good of the citizens who are also members of the Church. As Mikat put it, both the State and the Church "claim the allegiance of the same persons and are composed of the same members."¹²

In the course of historical events, however, instead of the temporal (State) being a mere instrument of the spiritual (Church), the process of differentiation saw the temporal take its full autonomy. In the words of Jacques Maritain, "the secular or temporal order has in the course of modern times been established as regards the spiritual or sacred order in such a relation of autonomy that, in fact, it excludes instrumentality. In short, it has become of age."¹³ It has, then, become necessary to consider more appropriate and mature ways of treating the relationship – ones that recognise the authenticity and autonomy of each, and ones that call for both separation and co-ordination at the same time. After all, if it is the same human persons who are affected, they should not be torn by such a power struggle. Thus, the Church has developed the thesis that it is *in the human person* that unity is to be sought and discovered, unity of purpose and commitment. The old Gelasian principle enunciates that "the Christian is both a child of God and a member of the human community as a citizen of the State. In each capacity he is endowed with a set of rights. Harmony between Church and State must be achieved in the human person."¹⁴

¹¹*New Catholic Encyclopedia*, 1967 edition, s.v. "Church & State," 730.

¹²Mikat, "Church and State," 227.

¹³Maritain, *Integral Humanism*, 176-177.

¹⁴*New Catholic Encyclopedia*, s.v. "Church and State," by J. N. Moody, 738.

3. Historical Background of the Church-State Relationship: Separation Praxis

In contrast to Augustine, Thomas Aquinas developed a political theory that recognised the two powers, not only as being both divinely instituted, but as consequently autonomous, each in its own mode of existence and area of operation. In matters concerning the salvation of souls, however, the Church has priority to demand and receive obedience. In Aquinas' words, "Both powers derive from God, the spiritual and the temporal... In its own sphere, the civil power enjoys ample independence."¹⁵ This doctrine – called by Herlihy the roots of the balance of power – was developed further by Robert Bellarmine who called for separation of Church and the State as the Church has only indirect power *in temporalibus*. This development of the separation thesis was brought to conclusive clarity in the nineteenth century by Pope Leo XIII. In the words of Pope Leo,

Like civil society the civil power has its source in nature and therefore in God himself. Whence it follows that civil authority as such is from God alone ... God has divided the care of the human race between two powers, the ecclesiastical and the civil. One is in charge of divine concerns, the other of human concerns. Each is supreme in its own sphere; each is confined within certain limits which follow from its nature and proximate goal.¹⁶

These are very clear teachings on the truth that Church and the State are two separate realities, and that it is to be accepted, both in theory and in practice. History has witnessed various forms of this separation. We study three major ones.

3.1. Inimical Separation

This is a hostile separation of the Church from the State. Examples are found in Communist countries where the Church is strategically (though often not legally) excluded from public life. The State accuses religion (represented by the Church) of being the opium of the masses (*Opium des Volkes*). This must stop, the State claims. The spiritual dimension of the human person is denied and those who insist on religion suffer immensely.

¹⁵Thomas Aquinas, *11 Sent.*, d. 44, q. 2, a. 3 & 4. See Mikat, "Church and State," 230.

¹⁶Pope Leo XIII, *Immortale Dei* (Nov 1885), no. 1; See Mikat, "Church and State," 230.

There is a clear-cut separation of State and Church, and an even greater separation of Church from schools. The purpose is to deprive religion of influence, especially over young people.¹⁷

3.2. Co-ordinated Separation

This can also be called a separation bound up in Partnership, Co-ordination or Co-operation. It admits the autonomy of both Church and State, yet it recognises areas of mutual interest and consequent common engagement. Such areas include education, marriage, health, and other social services. In these areas the State cannot dig it all alone. The State can, therefore, provide aid, thereby encouraging the religious and other bodies in their work for the good of all. The basic fact is that it is the same human persons that both powers are working for. Countries that practice Co-ordinated Separation include Germany, Belgium, Austria, and Canada.¹⁸

In some of these and other countries like Germany, Spain, Belgium, and the Dominican Republic, the arrangement of a Concordat has been entered into. A Concordat is a legal proviso that guarantees the Church freedom of worship and, in some cases, material means of sustenance for its clergy. Today concordats are no longer in vogue and are not even necessary. There could be treatises and constitutional arrangements to ensure that the Church has the necessary freedom to operate in the society. The United Nations Declaration on Human Rights has made religious freedom a right for all. This is respected in most nations of the world – including Nigeria (at least in principle).

3.3. Pure Separation

This is the system found today in the United States of America and, to a large extent, in France. Its basic tenet is "Free State and Free Church." In the First Amendment to the U.S. Constitution, it is stated categorically: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."¹⁹

Religions and churches are, thus, fully free to exist and practise. They should, however, expect no subsidies from the government, federal

¹⁷See Mikat, "Church and State," 237.

¹⁸See Mikat, "Church and State;" S. Eboh, *Church-State Relations*, 31.

¹⁹See Mikat, "Church and State;" S. Eboh, *Church-State Relations*, 29.

or state. This is to obviate possible ill-feelings of those who do not believe or practise any religion, or who practise other faiths or doctrines. Even though there should be no teaching of religion in state (public) schools, the Churches are free to establish their own schools where they can teach their religion. Of course, the State would set the standard for the operation of schools. The Church has freedom within the law and can immensely contribute to the welfare of the citizenry. Thus, the State recognises its limitedness, that it is not, in the words of John Courtney Murray, "all-embracing, and omniscient."²⁰ Pure separation has something to commend it. It avoids the quarrels about who should be helped or not. Yet, it sets the State at an unwarranted distance from the Church in terms of areas of mutual concern. One could ask: how pure in reality is the purity of pure separation? One element comes to the fore here: the fundamental freedom of religion that pure separation guarantees. Some notes on this follows.

4. Religious Freedom and Conflicts

It is worthy noting here that, today, there is recognition by almost all of the fundamental rights of human persons, including freedom of religion, conscience (on the churches' side), association, and the political franchise (on the States' side). The 1948 Universal Declaration on Human Rights, the 1962-1965 Vatican Council II, and, at the local level, the Nigerian Constitutions of 1960 and 1979 make clear the reality of human rights for all. Article 2 of the Universal Declaration states as follows:

All persons are entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour sex, language, *religion*, political or other opinion, national or social origin, property, birth or other status.

Further this is specified in Article 18 as follows:

Everyone has the right to freedom of thought, conscience and *religion*; this right includes the right to change his religion or belief, and freedom, either alone or in community with others and in public

²⁰J. Murray, "Separation of Church and State" in *Theological Studies*, 16, 1 (March 1953), 152.

or private, to manifest his religion or belief in teaching, practice, worship and observance.²¹

The official text of the Catholic Church guaranteeing Religious Freedom (*Dignitatis humanae*) states as follows:

The human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups, and of any human power, in such wise that in matters religious, no one is to be forced to act in a manner contrary to his own beliefs. Nor is anyone to be restrained from acting in accordance with his own beliefs, whether privately or publicly, whether alone or in association with others within due limits.²²

The Nigerian Constitution also provides for freedom of Conscience, Religion, and Worship in the following words:

Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom, either alone or in community with others, and in public or private to manifest and propagate his religion or belief in worship, teaching, practice and observance.²³

It is in this perspective that one must seriously challenge, and even directly condemn, the many acts of what we may call religious injustice perpetrated in Nigeria (and in other nations of the world) where people are persecuted for their religious beliefs and where a particular religion with force and violence tries to impose its tenets and laws on others. This is

²¹United Nations, *Universal Declaration of Human Rights*, approved and proclaimed by General Assembly Resolution 217 A (111), of December 1948, see Articles 2 & 18; emphasis added.

²²Second Vatican Council (1962-65), "On Religious Freedom (*Dignitatis Humanae*)," in *The Documents of Vatican II*, trans. W. Abbot, London: G. Chapman Pub., 1967, no. 2. The concluding clause of "within due limits" is meant to underline the context within which one can practise and evangelise. It is within the respect that is due to other religions and rights, that there be no undue interference on the liberty of others, for instance, to quiet atmosphere, to speak, and to have their peace and order in the nation. This proviso is to avoid confusion and disorder. For, as legal experts agree, "to guarantee rights without qualification is to guarantee licence and anarchy." S. Eboh, *Church-State Relations*, 44.

²³*Constitution of the Federal Republic of Nigeria*, (1960), Chapter III, Section 23. The same is repeated in the 1979 and practically in all other Constitutions of the country.

clear in the cases of Muslim fundamentalism where *Sharia* laws were imposed on non-Muslims and where, when Christians resisted this illegal and unjust practice, they were attacked.²⁴ We call these acts 'religious injustice' because they are squarely against the Constitution that holds that Nigeria is a secular state and that the State shall not adopt any religion as the state religion.

Why is this situation so? Izibili believes that ignorance, selfishness and false interpretations of the texts of the given religion are contributing factors. Islam is formally said to be a peaceful religion and nowhere in the Koran is one asked to attack people of other faiths for being of other faiths.²⁵ Yet, some fundamentalists divert it to warring against non-Muslims. The Jihad, properly understood, is a spiritual war against one's egoism and not a war against innocent citizens. Selfish fundamentalists, however, continuously wage war against Christians despite the fact that the Koran directly forbids the shedding of innocent human blood (Koran 5:32). It is plainly inconsistent that some state governors in Nigeria impose *Sharia* law on all, including non-Muslims, in their territory, directly transgressing the Constitution of the land which states that there is freedom of conscience and religion. This gross religious injustice must be redressed. Justice has been said to be a weeping virtue. The Nigerian nation will not know peace, and shall continue to weep, until justice is done.

In most African democracies there is separation of Church and the State. While the law does not legislate aids in terms of subsidies to religions and Churches, practical sense allows it, and the common practice is that the State does intervene in assisting various religions especially in their engagements in socio-caritative work. We shall return to this point in our later discussion of the Non-Discriminatory State. For now, however,

²⁴Records on this are innumerable. Since the 1980 *Maitatsine* group emergence, Matthew Izibili writes, there have been continuous planned uprisings of Muslims against Christians in Northern Nigeria, e.g., Maidugri (1982), Jimeta & Yola (1984), Gombe (1985), Zangon Kataf (1992) as well as Kano (2004). For more on this see M. Izibili, *An Inquiry into the Politics behind Christian-Muslim Confrontation in Nigeria*, Warri: Coewa Pub., 2005, 10ff. See also the informative study done by B. Okike, *The Practice of Sharia in Nigeria: A Democratic Secular State*, Enugu: Snaap Press, 2000.

²⁵H. Abdalati, "Islam," *Focus*, Islamic Publications Bureau, Lagos, N.D., 160, See M. Izibili, *Christian-Muslim Confrontation*, 44.

we must consider the vocabulary and realities of how separate and neutral or secular the State can and should be *vis-à-vis* the religions and the churches that are found in its citizenry. It is important to address this point, as it could help us in coming out of the web of confusion, for instance, in the Nigerian case, where the Constitution says one thing and some governors do another. Should the state be fully neutral or should it be involved in religious matters?

5. State Neutrality: The Secular State

5.1. The Secular State: Caring

In his book *The Secular City*, which has now become a classic, Harvey Cox has argued that modern man has found himself in a city (the technopolis, megalopolis, or today's Supercity) where religion and God do not play any major roles. This is in contrast to the religious-imbued life of what Andrew Greeley describes as the "primordial, tribal, communal *Gemeinschaft* style of the past."²⁶ To talk of a secular city, and, in our context here, of a secular State, therefore, points to a '*décalage*' (rupture) with a past that was predominantly religious. Basically, the term 'secular' is contrasted with 'sacred' or 'holy'. It has various nuances, and Andrew Greeley distinguishes about five senses of the secular. Secular can mean:

1. a situation where religion is no longer identified with every aspect of life as before;
2. that man falls short of his religious ideals;
3. that religion no longer influences civil authority, and should not do so;
4. that people are practising religion or church laws less; and
5. finally, that people live in modern anonymous cities with no religious or moral ties as hold in village life of former times or in church communities.

In brief, a secular state would, then, be one that does not attach itself to religious practice. It stays and functions so to say, in a free atmosphere, one that is unencumbered by people's religious sentiments, ideals, faith

²⁶Harvey Cox, *The Secular City*, New York: Macmillan Pub., 1965. In this new 'supercity' men live now "the metropolis of automation, mass communication, mobility and anonymity." See D. Callahan ed., *The Secular City Debate*, New York: Macmillan Pub., 1966, 23, 102; See also H. Cox, *Religion in the Secular City*, New York: S. & Schuster Pub., 1984.

and morals. But in many societies – including the American, as described by Cox – people still have their religious tenets and practices. How should the modern State relate to these? The response to this question brings in the principle of the neutrality of the State. While groups and individuals may have and practice their religious convictions, the State which is neutral, absents itself from these religious issues. It carries out only those purely socio-political and economic-administrative tasks of a modern State.²⁷ But this effort at neutrality could be fraught with problems.

First, there is a dichotomy in how it cares for the basic welfare of the citizen; it is involved with some, like the socio-economic, while abandoning others like the religio-moral. Second, neutrality can be well defined in theory, but in practice, the statesman is often obliged one way or the other, to favour or exclude religious practice. Third, if one rejects absolute neutrality (which is difficult given the second point above), one must settle for relative neutrality. Relative neutrality requires the State to be committed up to a point to the religious needs of the citizens. It, thus, would care for what the members regard as basic values for them (e.g., opportunities for religious practice), without falling into the error of making itself the High Priest or Imam of the religion (as occurs in Caesaropapism). It is in this context that A. Hartmann cautions that the State cannot abdicate its responsibilities to the citizens just because it is secular, separated from the Church. He makes the interesting distinction in French between *Etat laïque* (lay or secular State) and *Etat laïcisé* (secularised State).²⁸

If this description squares with what the members want as a caring state, what then is the force of calling such a state a *secular* state? The proper state in our conception here cares in all sectors with due limits. The religious is not screened out. Such a comprehensive caring State calls for a change in terminology. Such a State would no longer be secular in the strict sense of secular (non-religious). This description justifies the new

²⁷Such a secular State would be different from what S. Eboh has called a secularised State: one that is anti-religious, anti-Church and an avowed enemy of religion. It would confiscate Church property and systematically work toward her downfall. See S. Eboh, *Church-State Relations*, 92-93.

²⁸See Mikat, "Church and State," 232. One can apply the beautiful expression of Karl Rahner when he spoke of the *respect of domains*. Both the State and the Church should recognise and respect the domains of each.

name we are proposing for this type of State: the Non-Discriminatory State.

5.2. Secular State: Non-Adoption of a Particular Religion

In many nations of the world, and particularly in the nascent African democracies, a secular State is understood as one that does not favour one religion to the disadvantage of others. Hence, in a 1986 communiqué, the Catholic Bishops Conference of Nigeria defined what secular means:

Secularity of State implies that the State does not favour any one religion to the detriment of others. Such a secular State assures the common good and obviates common harm. It respects the conscience of all citizens and allows the full range of religious practice.²⁹

A leading Muslim author, Abdurraman I. Doi has argued that while the government does not interfere with states that do not run the *Sharia* system in Western Nigeria (as some states in Northern Nigeria do), it nevertheless does not favour one religion or the other. At the same time, he concludes, the government does not hinder religious progress and the individual and communal efforts made by the adherents to foster their faiths.³⁰

This goes to show that absolute neutrality in the sense of absolute neutrality of the State is unrealistic and, hence, out of the question. Biased, unfair, and outright unjust involvement must be excluded. The State, we hold, must work with, and help religions (in the case of Nigeria, churches and mosques) just as the religions must co-operate with the State in good governance. This is the practicalisation of the principle of Co-ordinated or

²⁹Catholic Bishops Conference of Nigeria, *Christian-Muslim Relations in Nigeria*, Lagos: CSN 1986, 14. This definition is confirmed by the Formal Christian Association of Nigeria (CAN) as follows: "We understand secularity in the Nigerian Constitution to mean that in a multi-religious society, the state and the government must not adopt any religion as state religion, nor favour any one religion through overt or covert act." See CAN in *Africa News Bulletin* 139 (Jan 1989), 22. Even in the Asian context neutrality is also impartiality as the Constitution of India clearly states: By declaring India a secular state, it merely meant that "religious matters were wholly referred to the respective Hindu, Muslim, Sikh, Christian, Jain, and other religious communities." In no sense does secularism mean anti-religion. Doi interprets this Indian situation to be exactly the same with the Nigerian one. For these and other details see Mushir-U Haqq, "Religion, Secularism and Secular State: The Muslim Case," in *Religion and Society* 18, 3 (September 1971); A. I. Doi, *Islam in Nigeria*, Zaria: Gaskiya Corp. Ltd., 1984, 342-343.

³⁰Doi, *Islam in Nigeria*, 343.

Partnership relationship we saw above. If we have taken all the pains in delineating the type of relationship we want (co-operation) and the type we do not want (total neutrality), we are logically and existentially bound to re-think the name we give the State that satisfies our relational praxis. It can no longer be said to be neutral in the strict sense. It cannot also be a merely secular State. Again, we dare to suggest the proper appellation of such a State is that it is a Non-Discriminatory State.

6. A Non-Discriminatory State

To make the expression of Jacques Maritain our own, a non-discriminatory State is "a concrete historical ideal."³¹ By this we mean that, in the particular context of African socio-political and economic-religious realities, we must use the right expression and find the right, relevant model that can work. This demands that we must not blindly imitate other societies. We must be concrete, realistic, and existential. African socio-political and cultural realities constitute our reflective and constructive background. The African is still deeply religious and religion counts as a fundamental value for his life. Nevertheless, we must present an ideal that has a future open to changes in the globalising world. Such an ideal, based on our past and constructed in our present, must pierce into the future. Only then can it shape better our future political landscape in the African *Sitz-im-Leben*.

Put bluntly, our argument here is that the proper arrangement of Church-State relationship, rather than being neutral or of a secular standard, should be non-discriminatory. A non-discriminatory State is the best for African and like nations. Commenting on the Indian Constitution, D. D. Basu comes close to expressing our sense of a secularity which is non-discriminatory when he writes: "A secular State ... means a State which has no religion of its own and which refrains from *discrimination* on the ground of religion."³² Another support to our thesis here is, as Eboh contends, that though Nigeria is a secular State with a separational policy, it is so in the sense of religious neutrality (at least legally) and not religious *indifferentism* or *secularisation*.³³

³¹Maritain, *Integral Humanism*, 127f.

³²D. D. Basu, *Commentary on the Constitution of India*, Calcutta: Sarker Pub. 1965, 2: 155, emphasis added.

³³Eboh, *Church-State Relations*, 41, emphasis added.

Ordinarily, the word 'secular', as we pointed out above, has a sense of non-religious. It is contrasted with the religious or the sacred; at times, it is opposed to it. This sense, however, does not fully capture what is described above, where the state does not only not oppose any particular religion, but promotes an equality of religious life and expression. A strictly secular state, which is the same as an absolutely neutral state, should not be concerned with any aid to religions.

Thus, while an absolutely neutral State is a non-discriminatory (or conventionally-called secular) State, a non-discriminatory state (in the sense that we have described it) is not an absolute neutral state. In the Nigerian context of religious value, then, a non-discriminatory arrangement is the preferred alternative both in content (e.g., open to aid to religions) and in terminology (as distinct from the strictly secular state). A non-discriminatory state expresses best the idea of the relationship between the state and the religion in its domain.

The change of terminology from secular to non-discriminatory is significant. 'Non-discriminatory' removes the (false) impression that the State has nothing to do with religions. It expresses the relationship that justice demands, but which the term 'secular' hides. That relationship is to provide what is fair to all. At the same time, the term non-discriminatory avoids understanding the state as religious, in the sense of adopting one religion as a state religion. One may ask, what are the exact types of provision and assistance that the state should give to religions that would not lead to quarrels among those who would feel excluded? We shall come to this point soon. To be noted at this point is that a non-discriminatory arrangement has the positive advantage of giving a sense of belonging to all members and, thus, promoting participation.

Thus, the members of a political community who are also members of a religious group would agree that, since religion is a basic value to them, a non-discriminatory state would be the best arrangement. Every compatible interest is protected. One can say that a non-discriminatory state is a partially neutral state – one which makes provision for religions while avoiding favouring some over others; one in which there is a relative, but not an absolute separation of religion and state. Citizens, by and large, would want such a state. Having the state provide for religious matters is consistent with their culture and tradition. Nevertheless, there must be a shred commitment to the rule of law; doctrines or morals which are provocative, not reasonable, or non-negotiable have to go. If one

religious community, for example, preaches that only its members can become the president of the country, any effort to concretise this unreasonable, discriminatory doctrine cannot be allowed to have its way. Violence is not to rule over dialogue.

7. Objections and Responses

One might object that state provision for religions discriminates against those who have no religion or are atheists. Even if we admit that Nigerians, like other Africans, are deeply religious people, this fact is contingent and can change. Some people may come to reject religion and become atheists. In such situations, should the State still provide for religion? Even if it does, could 'the future Atheists' argue that such a provision discriminates against them because common resources will be used to support a private good, i.e., religion?

Various answers to this objection suggest themselves. A rather sharp response will say that the objection is irrelevant because it has a purely hypothetical premise: the possibility of atheism being a significant force in Nigeria. For Nigerians, religion is a basic value and atheism is not a basic value. Yet, what happens should atheism become a reality, at least at a theoretical level?

One may argue secondly, that since the people see themselves as religious, any future atheists must be such a minority that their existence should not hinder state provision for religion, which is a basic value for the vast majority. This majoritarian view is, however, oblivious to what is due to the minority in justice. Moreover, there is no guarantee that atheists would remain the minority as suggested.

A third view is purely liberal: that of absolute neutrality. The state must be perfectly neutral in religious issues because of the dispute that has arisen. Therefore, any aid to religions must be eliminated as soon as even one atheist turns up. The liberal doctrine of absolute neutrality does not exhaust the plausible answers. At any rate, Nigeria is not like Western liberal societies that clamour for irreligion and, in places, has excluded religion from any state provision.

We prefer to argue that, instead of being absolutely neutral about the basic value of religion shared by many of its citizens, the State should provide for this value without neglecting any alternative basic value chosen by those who may turn out to be atheists, as these values are compatible. This is what a non-discriminatory state will provide for. After

all, Religion is known to be a powerful builder of human conscience that is equally conscious of civic responsibilities. Though not a political organisation like the State, the Church nevertheless has a socio-educational task to accomplish in the world and in the State. On this 'social mission' of the Church, Mikat writes:

The Church is the conscience of the public ... to awaken both the society members and the State ... to their role in making the common good a reality... [I]t is to awaken the conscience of all men, proclaiming that they must always observe justice and love in their doings.³⁴

The moral order is a functional responsibility of both the State and the Church. Therefore, mutuality of action and programme is a desideratum in this area. The State must not shy away from its deeper role as being responsible for values. Economy is not all. An economy may even collapse if there is no deeper value that sustains it. This value is provided by religion that aspires higher and goes deeper than this-worldly. The reality of God is necessary to maintain the integral reality of man, of society and of humanity *in globo*. This is why the State must assure a fair provision for all compatible interests in *relative* neutrality. Religion, when not manipulated, is the most reliable candidate for genuine state provision for the good of all and sundry.

In the African context under discussion, we have noted the reality of religious value, which is the fundamental justification for State provision. But there is another important reason why the State must provide for religion. It is the fact of the engagement of religions or churches in the socio-developmental welfare of the members of the society irrespective of religious affiliation.

Churches are seriously committed to education, health, and rescue services. Social services that care for the aged, lonely, and for abandoned children, orphans and street children are constantly engaged in by religious groups. One should only recall the extraordinarily successful case of Mother Theresa of Calcutta. It was not simply church work. It had to do with human persons as persons. These and many others are services to the citizens. The Catholic Church is known all over the world to be a pioneer and in the vanguard of providing these services. These services are not purely religious. They have to do with the quality of life of the human

³⁴Mikat, "Church and State," 233.

person, a being who possesses dignity and intrinsic value. All members of the society can and do profit from them. We argue here that the state is bound to assist religions in the provision of these and allied services to the public. These services are the duties of the state and, when religions engage in them, they are aiding the state in its responsibilities.

It is a logical consequence that the State not just co-operates with religions in these areas. It is equally required in justice that the state, which has the greater financial capability, aids religious bodies who commit themselves to educational, health, and other services to the people. There can be, then, no system of absolute neutrality. This calls forth, as a matter of justice, partnership, co-operation, and co-ordination. This brings into the limelight, makes relevant, and even renders imperative, our proposed system of Non-Discrimination.

We do not ignore what Paul Mikat calls the 'dialectical relationship' – meaning the uneasy and at times conflicting relationship – between the Church and the state caused by their different purposes of existence and fields of operation. We do not overlook his caution that no permanent arrangement can be fixed in advance for Church-State relationship, as historical factors (which are always changing) affect any such relationship.³⁵

Nevertheless we consider it necessary to delineate a vision that can guide the Church-State relationship in African nations given African socio-cultural conditions. We admit that as times change things also change. For now in our times (i.e., the Third Millennium in which we live), we can still articulate some clear ideas that can guide both Church and the State. It is our considered submission that the best guide is *A Non-Discriminatory State* within the background of committed religions. In this system all are involved for the good of all. This thesis is practicable given our circumstances. Above all, it can yield the very best results: for the State, the Church, and all in the society at large. Although the background and focus here are on African societies, other societies are not excluded from adopting and giving it a chance.

8. Conclusion

The relationship between the Church and the State has had a chequered history, and often there has been a struggle between them. Such a struggle

³⁵Mikat, "Church and State," 227.

has neither produced peace nor has it helped to achieve better the purposes for which either of them exists. The Church was founded to minister to the spiritual welfare of its members and through this ministry to reach out to the whole world for the salvation of souls. It does this through ministering, care, and love that will be completed in the next world. But to arrive at ultimate happiness, one must already live relatively well in this world with some modicum of happiness. Hence, the Church (which Edward Schillebeeckx describes as "the human story of God"³⁶), and more particularly the African Church (which the specialist in African Ecclesiology and Mission, Adrian Hastings, described as "the sign lifted up upon the earth of the care and love of God of the mission of his Son, of the renewal of all things"³⁷), also engages in humanitarian works to promote human welfare on earth (social mission). It is here that she is inescapably related to the state to work for the common good. Hence, between the Church and the State there is a veritable *do ut des* (give and take).

The state, on its part, is there to aid the temporal good of its members. But temporal goods are also closely linked with spiritual ones, such as moral values, the formation of conscience, and the proper understanding of the human person. Mikat writes that the Church is the conscience of the public.³⁸ The State, it must be noted, is made up also by citizens who must obey not only the civil law but also the law of God. No one is exempt from the Divine Law. Hence, the State must work with the Church in the realisation of its goals. This means that both Church and the State need each other. History has shown the excesses of Caesaropapism (State hegemony) and Hierocracy (Church hegemony), excesses that ceased only once some recognition of the autonomy of both institutions was arrived at. Some thinkers have settled for absolute neutrality (otherwise called pure separation); others went the way of a hostile separation that oppressed religion. But there also developed in the course of time the system of co-ordinated separation, called partnership. This was

³⁶E. Schillebeeckx, *Church: The Human Story of God*, New York: Crossroad Pub., 1990. He argues in this book that the Church must achieve its salvation in the context of the human society and polity. In his words, there is no salvation outside the world.

³⁷A. Hastings, *Church and Mission in Modern Africa*, London: Burns & Oates, 1967, 257.

³⁸Mikat, "Church and State," 233.

laudable as it gave both Church and the State opportunity to appreciate what the other can contribute to the persons that both are concerned with. For, as we saw, every citizen is also a member of the Church.

Now, when the notion of the neutrality of the state was developed, it becomes problematic whether the State should be fully neutral or only partially so. Neutrality vis-à-vis all religions has the advantage of saving the State from conflict about whom to support (e.g., financially) and whom to leave aside. But it has the disadvantage of neglecting what a partnership with the Church involves, that is, support of the work of the Church. How can the State expect the support of the Church when it does not reciprocate in supporting the Church's mission? In the words of J. N. Moody, "the State must support the Church when its aid is needed or when the temporal and spiritual or when the temporal and spiritual converge (e.g., in education, marriage)."³⁹

As we have seen, the problem that arises here – one which has also been the basic task of this paper to clarify – is: if the State supports religions represented by the churches, how can it avoid being accused of unfairness to some who may not have any religion? Not to support religions, we have argued, is not the best answer. Instead, the State should support the Church in a manner that does not discriminate against other religions or people of other convictions. In the African context, religion is a basic value and the State cannot stand aloof.

Furthermore, we made the proviso that the State also makes room for the interests of those (if any) who do not have religion, by giving support to whatever they choose as their basic value, provided such a value does not contradict state or normal human norms. Above all, the ultimate claim of this paper is that the State must work together with the Church in humanitarian and social work. (These include education, health, care for the disabled and the aged, and the hospice ministry.) These are responsibilities of the State, and if the Church gets involved in them, the State should gratefully and concretely support the Church and any other body that do so much good work. This following statement of Lord Acton,

³⁹J. N. Moody, "Church and State," 736. In the former West Germany, for instance, this was no longer a problem as both Concordat and State Legislation made a provision for the Church. Close co-operation, writes Mikat, had grown between the Church and the State, and when the Church engaged in social or public activities, "the State provided it with substantial sums." Mikat, "Church and State," 236.

drawn from *The Chronicle* of 1867, supports our thesis. For it addresses the proper relationship and mutual checks and balances between the Church and the State in their mission:

Real Liberty depends not on the separation but on the distinct and appropriate, but continuous, action and reaction of Church and State. The defined and regulated influence of the Church in the State protects a special sphere and germ of political freedom, and supplies a separate and powerful sanction for law. On the other hand, the restricted and defined action of the State in ecclesiastical affairs gives security to the canon law, and prevents wanton violation and arbitrary confiscation of rights.⁴⁰

The best relationship between Church and the State in contemporary African society is not merely a neutral state, nor a purely separated one. It is a state that cares for and commits itself to the values that religion itself supports – the provision of basic human necessities for all. It is a state that does not refuse to co-operate with other bodies in the task of the provision of the integral welfare of people, who are both citizens of the state and members of the Church. The name for this model type of State is the *Non-Discriminatory State*.

⁴⁰*The Chronicle*, 1868, 2: 31; see also Acton, *Church and State*, 467.

RECONCILING THE MADRASSAH WITH THE SCHOOL Freedom of Religion, Education, and the Dilemma of Contemporary Muslims

Ghazala Irfan^{*}

1. Introduction

When we look at education today, we see that there are no inflexible dogmas and no infallible masters. Everything is to be understood in rational and human terms. There is no finished body of knowledge; the search for truth is perennial and the quest unending. The model discipline here is, of course, philosophy. Yet, this model seems to be at odds when it comes to education concerning religion. In Islam, the pivot and fulcrum of all life is Allah. Allah is 'everywhere' (Omni-present), 'every when' (eternal), 'every what' (Omni-competent), 'every why' (Omniscient), and 'every who' (Omni-potent). There is authoritative knowledge in religion: eternal, infinite, perfect, and complete.

Freedom of religion is generally held to involve a freedom to express, to disseminate, to question, and to teach. But in light of the contemporary understanding of education and of religious knowledge and truth, many contemporary Muslims are confronted with a dilemma. For, since religion and philosophy have different approaches to truth, the predicament is whether to reject one and accept the other, or to bifurcate oneself to accommodate both.

There is, then, a dilemma for Muslims today, particularly for Muslims in South Asia. Religion and philosophy have different approaches to truth, and institutions in Islam that provide education reflect these different approaches as well. In this essay, I wish to draw attention to this dilemma by, first, providing a short sketch of the nature of religion in Islam. Next, I will look at the different ways in which knowledge and truth are understood in religion and in philosophy, and also the implications of this for education. Finally, I want to look briefly at the contemporary influence of theologians (*ulema*), how this contributes to the dilemma and,

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by extension, to how the claim to freedom of religion – in the sense of a freedom to express, to disseminate, to question, and to teach – itself might be at stake.¹

2. Nature of Religion in Islam

Contrary to popular belief neither Islam nor Islamic society is a monolith. Despite the die-hard unicity of Islam, within the Abrahamic tradition of Monotheism, the Muslims have never agreed on a singular homogeneous belief system. Disagreements and variations emerged soon after the death of the Prophet. The *Shian-e-Ali* (the Party of Ali) parted ways never really to work within the same framework. The Divine Book, the Qur'an, has had up to seven versions according to Ibn-e-Khaldun. "For the Men around Muhammad transmitted it on the authority of The Messenger in different ways."² "Eventually," he maintains "seven specific ways of reading the Qur'an became established."³ It was compiled during the time of the third *Khalifa* (Caliph or successor to the Prophet Muhammad) but it is not in any chronological order, for example, the Meccan Ayats (verses) do not necessarily precede the Medanite. There is, therefore, much room for interpretations as there have been several versions, more so because there is no prescribed ecclesiastical order in Islam.

There are supposed to be no intermediaries or intercessors between Allah and the individual human being. No priests are required to lead the prayers; anyone can. No exclusive readers of the Qur'an are necessary; everyone can. It is permissible to say that there are as many Islams as there are Muslims; everyone is entitled to individual, unique interpretations. The oneness of Allah did not limit these manifold interpretations. In fact,

¹In this discussion, I draw on Annemari Schimmel, *Islam and the Indian Sub Continent*, Lahore: Sang-e-Meel Publications, 2003; Rasheed (Jullundhri) Ahmad, *Dar-ul-Loom Deoband: Bartanwi Hind Mein Musalmano Ka Nizam-e-Taleem*, Lahore: Idara-Saqafat-e-Islamia, 2004; Huston Smith, *Religion: Significance and Meaning in an Age of Disbelief*, Lahore: Suhail Academy, 2002; Majid Fakhry, *A History of Islamic Philosophy*, 2nd edition, New York: Columbia University Press, 1983; and H. A. R. Gibb, *Islam*, 2nd impression, London-Oxford-New York: Oxford University Press, 1975.

²Ibn Khaldun, *The Muqadimmah: An Introduction to History*, trans. Franz Rosenthal, London: Routledge and Kegan Paul, 1958, 440.

³Khaldun, *The Muqadimmah*.

Allah's Ninety Nine Names reflect the diversity of Qualities that Allah possesses.

Let us also remind ourselves that Islam spread very rapidly outside the Arabian Peninsula to countries that had no exposure to Arabic language or Arab ways. Even today the largest number of Muslims live in Indonesia, India, Pakistan, and Bangladesh where Arabic is neither spoken nor understood. Islam of the Indian sub-continent has been eclectic in nature, borrowing from and being influenced by the Zoroastrians of Iran, and the Buddhists and Hindus of India. The religion of the Muslims of South Asia has been mystical in character and heterodox by Arabian criteria.

3. The *Madrassahs*

Orthodox religious education is imparted in *madrassahs* (traditional Islamic schools). This education is free. Board and lodging is also provided. It is normally attached to a mosque and serves the poor. Very little research had been conducted on *madrassahs* prior to 2001. According to research conducted in 2002 by the Institute of Policy Studies (entitled "Pakistan: Religious Education Institutes – An overview"), only four domestic studies – two government and two private – had been conducted. The sudden and unprecedented interest in *madrassahs* does not have to do with their propriety as alternative academic institutions. The interest is due, more, to political reasons. It hails from the western perception in general, and American perception in particular, that:

1. *Madrassahs* are the dens of extremism, fanaticism, fundamentalism, and terrorism;
2. They are churning out the *Jihadi* zealots who fought alongside and supported the Afghan war against Russia;
3. The Taliban regime in Afghanistan was linked to the graduates of these Pakistani *madrassahs*; and
4. Finally and most importantly, they have a major role in supporting Al-Qaeda and Osama-bin-Laden's group of former American allies, now their major foe.

Perceptions – even if they are based on facts – can be manoeuvred and manipulated like the story below indicates:

Seeing a big dog about to pounce on a little child in New York's Central Park, a man took out his gun and killed the dog before the child was hurt. A reporter on the spot ran up to the man and said:

"You have made news. I am going to report this, and tomorrow there will be a headline: 'New Yorker Saves Child'." The man said "But I am not a New Yorker." "OK," came the reporter's reply, "the headline will read 'Alert American Saves Child'." "But I am not an American," said the man. "Where are you from then?" asked the reporter. "From Pakistan" was the response. Next day the headline read: "Pakistani Muslim Fanatic Kills Dog."

I am not suggesting that *deeni* (religious) *madrassahs* have not contributed to some or all of the above. Pakistanis themselves also perceive *madrassah* education as fanning a sectarian divide which has become increasingly violent in attacking mosques, especially between the Shia and the Sunni sects. This, however, is also due primarily to political rather than religious reasons.

In America's war against the Soviet Union in Afghanistan, Pakistan became the front-line state for its geo-strategic position. Pakistan received massive funding from several sources, each having its own sphere of influence: the USA (obviously), Saudi Arabia, Egypt, and Iran. This funding ultimately created what Pakistanis call a heroin and Kalashnikov (Russian gun) culture.

The sub-continent and Afghanistan have always had opium. In its raw form, it is mild and harmless; it enables people to resist the intense heat and helps them to sleep. With potent heroin being made and smuggled through Pakistan, heroin addiction has become a common tragedy. Also, in the North West Frontier Province there has long been an influx of guns. The challenge for these people was to acquire Russian guns, not with money but by killing a Russian and taking his gun. So there was a piling of Kalashnikovs. Where could the people be trained? The only institutions worth its name in their mountainous terrain were the *madrassahs*, as they were the hub of activity. Thus, was born the significance of the *madrassah*.

Traditionally, there have been five different kinds of *madrassahs* that exist among the Muslims of South Asia according to *mazhab* (sect): (1). *Deobanidi* (Sunni-Hanafi): This accounts for 65% of all *madrassahs*. They are reformists, yet respect tradition; they include *Taliban* and *Talighi Jamaat*. (2). *Barelwi* (Sunni-Hanafi): These are traditionalists, yet they defend cultural / spiritual rituals of the Sufis that the *Deobandis* condemn. (3). *Ahl-i-Hadith* (Sunni): These return to *salaf* (earliest Muslims) and reject the prevalent *Shari'a* discourse. (4). *Jama'at-i-Islami* (Sunni): It

represents political Islam. (5). *Al-Shia* (Shia). All these have been 100% male domains.

According to Khalid and Saleem Mansoor of the Institute of Policy Studies, Islamabad, in 1988 there were 2,800 *madrasahs* with 0.5 million students enrolled. In the year 2000 there were 6,700 *madrasahs* with an enrolment of over 1 million students.

At this juncture, let us not forget that *madrasahs* have not been the only institutions of learning in the Islamic world. The *Jama' Masjid* (the main mosque used for Friday prayers) always served as a pivot of religious teaching. *Maktabas* were substitute institutions used for primary education and basic teachings of the Qur'an. These were generally attached to the mosque also. The *Zawiya/Khanqah* provided the Sufi alternative where gnostic (illuminationist) practices took precedence over scriptural texts. Most of these *madrasahs*, *maktabas*, *majlis*, and *khanqahs* were informal. According to John Esposito, it was Nizam-ul-Mulk (d. 1092), Vizier of the Seljuk Sultans, who first institutionalized the *madrasah* (though it existed before his time), and created a network of schools that spread in Damascus, Cairo, and India.⁴

By the end of the 12th century there were at least 30 *madrasahs* in Damascus and an equal number in Cairo. What is important to realize is that at the time of the colonial incursion and consolidation in the 18th and 19th centuries, the major institutions of learning in Muslim lands (including India and Pakistan) were the *madrasahs*.

Let us now turn to the curricular of traditional Islamic education. It was divided into two broad fields: *Manqulat* (the transmitted subjects) and *Ma'aqulat* (the rational or secular subjects). The *Manqulat* included: *Tafsir* (exegesis of the Qur'an), *Hadith* (the tradition of the Prophet), *Sarf* (Arabic grammar), *Nahw* (syntax), *Adab* (language and literature), *Fiqh* (jurisprudence), *Usul-ul-fiqh* (principles of jurisprudence), and *Balaghat* (rhetoric). The *Ma'aqulat* consisted of: *Mantiq* (logic), *Falsafa/Hikma* (philosophy), *Kalam* (theology), *Riyaziyyat* (mathematics, arithmetic, geometry), and *Tibb* (medicine).

Each *madrasah* had different foci or emphases. When we look at the Indian subcontinent we find the following. The *madrasah* in South Asia served the religious scholar as well as the civil bureaucracy in India before

⁴John L. Esposito, *Oxford History of Islam*, Oxford: Oxford University Press, 2000.

the British rule. The emphasis on *ma`qulat* served the Muslim courts. However, with the advent of British courts and the English language as the court language, the *madrasah* lost its importance and Islamic scholarship became obsolete, for it no longer provided useful knowledge. These were replaced by new, western style institutions, such as schools, colleges, and universities.

Three noteworthy responses were made to the setting up of these educational institutions of British character. First, in 1867, we find the 'Dar-ul-ulum' at Deoband aimed at preservation of traditional religious learning. It was institutionally radical. Next, in 1875, we have the 'Muhammadan-Anglo Oriental College' at Aligarh by Sayyid Ahmed Khan. This was set up along European lines. It was modern and progressive. Then, in 1891, "*Nadwat-al-ulama*," at Luknow, U.P., was set up by Shibli Nomani. Its avowed mission was to balance the excessive traditionalism of Deoband and the excessive modernism of Aligarh. This institution was unable to sustain itself.

This was the beginning of the divide between the *Ulema* (theologians) of Deoband and the progressives of Aligarh University (as it came to be known). This divide epitomized in the diversity of attitude between religion in the *madrasah* and philosophy in the university.

4. Religion, Philosophy, and Education

"Truth is manifest" in religion and, therefore, it is deduced, in the *madrasah*. It is obvious and clear, for it is both apprehensible and comprehensible. We are aware of it, appreciate it, and react to it. It is knowable and, moreover, applicable in society. This truth, thus, fulfils adequately the need for a psycho-therapeutic support framework if not for a metaphysical-epistemological doctrine. But the claim of religion is that it is eternal (i.e., for all times) and universal (i.e., for all peoples). It is fixed and final. It is complete knowledge providing "a code, a cult, and a creed." These three elements, according to D. J. O'Connor, refer to a set of moral and ethical rules, a set of observances or rituals and a set of beliefs about God and humanity's relation to it.⁵

In religion, knowledge is held to be infallible and certain. There is no risk of error or doubt, for truth is indubitable. There is no provision,

⁵D. J. O'Connor, *An Introduction to the Philosophy of Education*, London: Routledge and Kegan Paul, 1957; Indian Reprint 1986.

therefore, for tentativeness or guess-work. Since God is Omniscient and He has revealed himself to His Prophets, there cannot be any challenge or question.

In philosophy and, by extension, in the university "Truth is conjectural." There are no ready or easy solutions to questions. If one cannot prove God, one cannot disprove it either. It is a solution to philosophical problems to assert that they have no solutions. The exercise is, thus, only speculative and discursive. Socrates was only a lover of wisdom, not a possessor of it. His wisdom consisted in knowing that he knew nothing. He was no sage, no authority, and no arbiter of truth. He was a seeker, an inquirer, an explorer, not knowing whether there is light at the end of the tunnel. A philosopher has no alternative but to continually reflect upon and be ready to alter his or her methodology.

The acceptance of fallibility, therefore, is the prerequisite of any philosophical enterprise. The realization that hope may reside in probability – and that too in a very small measure – may result in pessimism. But there is no reason to despair, for tentative, provisional guess work is philosophy's greatest asset. It is only when arguments are inconclusive that amendments occur which herald growth, evolution and change. It is only when a free, open, critical examination of assumptions is sustained that creativity emerges. Thus, what distinguishes religion in the *madrassah* from philosophy in the university is its approach and attitude.

The dogmatic approach of religion is to look for regularity, uniformity, and harmony, to anticipate order, and to attempt to find it even when there seems to be none. This dogmatism may be a pre-condition for dogged pursuit of beliefs. It may be necessary when we need to convince ourselves and others to accept what seems all too evident. The problem is that religion is so easily justified by an appeal to omniscience, the claim that Divine Knowledge is *a priori* true and valid and above the need for justification.

What characterizes philosophy is its susceptibility to modification. Judgment is never final, and so cherished beliefs remain open to correction and rejection. Truth is not luminously clear but elusive; it is not obvious but concealed. Philosophy has its misgivings and doubts, and is open to be tested and re-tested. It is the method of trial and error, of conjecture and refutation.

A philosophical approach may also consider appropriating truth by degrees or approximations. This is gradual, uncertain, and hard to come

by. This can paralyze any quest; if all efforts are futile and all knowledge unascertainable, one might well not try. Yet, this is what the philosophic attitude inculcates – to live without hope, yet without fear, and not to find solace in fairy tales or to delude oneself into believing that one knows.

The attitude in the *madrassah* is to appeal to tradition – that tradition is the only competent authority or criterion of truth. The religious approach encourages the authority of religion alone and asserts that no man's authority can establish truth; all we need to do is submit to and accept the truth which is super-human and, therefore, super-natural.

The philosophical approach enjoins us not to conform to the command of authority however exalted it may be. It also requires us to have the humility to confess that one does not know but one shall continue to learn and participate in the unending quest. The pre-Socratic philosopher Xenophanes describes it thus in his poetry:

But as for certain truth, no man has known it
Nor will he know it; neither of the gods,
Nor yet of all the things of which I speak.
And even if by chance he were to utter
The final truth he would himself not know it
For all is but a woven web of guesses.⁶

The philosophical approach must necessarily retreat from traditionalism and authoritarianism and allow indeterminacy. This would assert that truth cannot be established. If truth is not discernable and definitive knowledge is not acquirable, we have to be content with probability and a perennial quest, with a constant willingness to analyze and be corrected. This entails a constant need of interpreting and affirming, and re-interpreting and re-affirming all the hypotheses.

In the religious framework, essential precepts are never challenged for they are based on the faith that, if it were not for our sinful, evil refusal to see the truth, we would be enlightened. This may also be the basis of the self-righteousness of the religious and the fanaticism of the believers. If the sources of knowledge are divine and truth is above and beyond humanity, there is no possibility of error. Since God is the Truth and God is Truthful, all we need to do is purge our mind of false idols.

This may also promote absolutism for one is no longer limited by

⁶Karl R. Popper, *Conjectures and Refutations: The Growth of Scientific Knowledge*, 4th Edition, London: Routledge and Kegan Paul, 1972, 26.

restrictions or awkward questions. Everything is positive, certain and unconditional. All cherished assumptions are reinforced for they need no reconstruction or reinterpretation. Not only do questions not require reformulation but the answers are conclusive. All that is sought, therefore, is an all-embracing allegiance, since there is no need of explicit explanation or what one holds to be implicitly true. The clergy helps to reiterate this absolutism.

In contrast to the religious approach, the philosopher is constrained to admit that no knowledge is final, for there are no guarantees. Even if a theory that is held is true, there is no way of knowing so with certainty, for there are no eternal criteria of truth. So one can never know for sure whether what one believes to be true is, in fact, so.

One cannot but refer here to Kierkegaard. He bade us look to the Abraham story and ask on what ground or criteria was Abraham sure that the voice that commanded him to sacrifice his son was that of God. It might have been that of Satan. Thus, in Popper's words, "Knowledge can be only finite, while our ignorance must necessarily be infinite."⁷

This is at variance with the psychological process of thinking in religion where it is so obviously easy to find arguments to justify what one holds to be true on other grounds, e.g., on faith or belief, tradition, or authority. Philosophers pursue a disinterested search for truth, not censoring their investigations and not pretending "that deep-seated prejudices are heaven-sent intuitions."⁸ Notwithstanding Russell's own bias (which is evident from the previous statement), it is only fair that the difference between the irrational and the non-rational be clarified here. The religionists maintain that their beliefs do not require to be justified by such methods, that the real ground of religious belief is not rational at all. However, philosophy has traditionally been used to justify the religious point of view. But, as O'Connor points out, "this would be a confidence trickster's policy of heads I win, tails you lose."⁹ The argument, in fact, reads: "if these arguments are valid, they establish my case, but if they are invalid, the rational grounds for my beliefs are invalid."¹⁰ Despite this use

⁷Popper, *Conjectures and Refutations*, 29.

⁸Bertrand Russell, *History of Western Philosophy*, London: George Allen & Unwin Ltd., 1946, 789.

⁹O'Connor, *An Introduction to the Philosophy of Education*, 124-5.

¹⁰O'Connor, *An Introduction to the Philosophy of Education*, 124-5.

of philosophy by the religionists, there are other risks they do not wish to take and, therefore, they do not agree with the basic philosophical assumption that all knowledge is fallible.

One could summarize this difference of attitude by agreeing with Russell when he describes an educated person of being one who has learnt that information always turns out to be, at best, incomplete and invariably false, misleading, fictitious, or just dead wrong.

The religious person, in general – and the Muslim person, in particular – considers that the pivot and fulcrum of all life is Allah. Allah is 'Every-where' (omnipresent), 'Every-when' (eternal), 'Every-what' (omni-competent), 'Every-why' (omniscient), and 'Every-who' (omnipotent). Allah is Proactive, Active and Interactive. Authoritative knowledge is eternal, infinite, perfect and complete, and is readily available in the word of Allah, i.e., in the Qur'an.

This is in sharp contrast with European-type schools where everything is understood in rational and human terms. Thought-provoking questions epitomize that paradigm. Critical reflection consists of wisdom without answers and with a continuing, gnawing doubt. There is no finished body of knowledge; the search is perennial and the quest unquenched.

This clear cut demarcation of domains should make neat compartments and clear division of categories. But there is no dichotomy of *Deen* (religion) and *Dunya* (world) in the Spirit of Islam. There is no dichotomy between the 'Private and the Public', 'Individual and Social', 'Abstract and Concrete', 'Mind and Matter', 'Spirit and Body', 'Knowing and Doing', 'Noumena and Phenomena', and 'Transcendent and Immanent'. Thus, knowledge, truth, beauty, and goodness are inseparable.

Moreover, Islam is not a monastic religion that promotes a withdrawal from the pleasures of life. The Prophet himself was a trader and businessman. He brought forth the concept of state (the state of Medina) where the *Khalifa* (Caliph) was the head of the state and of religion. Thus, the celestial (other worldly) and the terrestrial (this worldly) were supposed to converge to bring forth a moral social order. Islam also does not distinguish between instrumental values and non-instrumental values: for what is good and useful for the world is good and useful for the hereafter. There is no duality (and that is the point of reference of the Oneness of Allah): no duality between body and mind, mind and spirit, or spirit and divinity. The world is the arena of activities

with the proviso that the human mind remains subservient to Allah. This is the realization that human beings are finite and limited and must recognize that they are ignorant.

5. The Influence of Theologians (*Ulema*)

In the name of Islam, *Ulema* (theologians) have compelled Muslims to choose between two worlds which they made mutually exclusive, thereby compromising the holism that is the essence of Islam. They usurped authority, monopolized religious *Ilm* (knowledge) and, thus, created a community of fragmented individuals unable to resolve the divide.

The domain of *Ulema*, like that of the *Faqeeds* (jurists), was cent percent male. Women remained only marginal in religion, and were excluded as exponents. In fact, they were considered both *Naqis-ul-Aql* (deficient in reason) and *Naqis-ud-Din* (deficient in religion). Thus, a handful of male religionists usurped the privilege of most of the male population and all of the female population of Muslims of the right to seek.

The *Ulema* also usurped the right to disagree by declaring, in the Sunni world, that the doors of *Ijtehad* (re-interpretation) were closed, that they were the *Maqeen* (owners) of *Dar-ul-Ilm* (abode of knowledge). Moreover, the *Madrassah* proclaimed that dissent was equivalent to heterodoxy.

The *Ulema* also maintained that the *Aalim* (teacher) was all knowledgeable (for only he knows Arabic and the sacred texts). He also became the intermediary between Allah and the seeker to the extent that (in South Asia) *Be-Pira* (without a *Pir/Murshid*/teacher) remained *Be-Dina* (without religion), even *Be-hidayata* (without guidance/direction). The *Pir* was impeccable to say the least. Because Allah's is the Best Word and the *Aalim* is above the rest, this paradigm was used by President Zia-ul-Haq of Pakistan who proclaimed in a nation-wide referendum that "if you want Islam, you want me." My personal experience as the presiding officer in the referendum was that some women replied: "*Assi Kali Kamli Valey Nu vote pana ey* (We want to vote for the Prophet)."

Thus, in the name of spreading Islam, the *Ulema* have limited the area of activity of the Muslim and hijacked the prerogative of every Muslim to read the text on his or her own. In the name of extending the knowledge of Islam, the *Ulema* usurped it, fixed it, closed it, and made it incompatible with the *Dunya* (world). No wonder Muslims today find themselves in the present predicament: either to reject one and accept the other, or to bifurcate

*oneself to accommodate both. If this be the unresolved dilemma of contemporary Muslims, they can only be described as fragmented, divided selves unable to cope. They become victims of the *Ulema* who, in the name of perpetuating the Islamic way of life, succeed in quashing the Islamic spirit. Thus, Muslims become victims of the successes and the failures of their educational institutions.

These *Madrassahs* and the *Ulema* have, however, remained disempowered within the larger context. They relied on donations/gifts from the believers and a small government subsidy from *Zakat* funds.¹¹ The total enrolment of students in schools in Pakistan going to *Madrassahs*, according to the research conducted by Andrabi, Das, and Zajonc, is 1%.¹²

Nevertheless, these *Madrassahs* have recently and suddenly become politically empowered – but that is another story and a different discourse. But it is obvious why these *Dar-ul-ilms* (abode of knowledge) and bastions of *Ulema* power became abode of the Holy Warriors (*Dar-ul-Jihadis*).

6. Conclusion

Knowledge and truth in religion, particularly, in Islam, is very different from the search for knowledge and truth in philosophy. In Islam, this “certain” knowledge is to be found in what is taught in the *madrassah*; outside of this, i.e., in the schools and the universities, however, knowledge is much more tentative. One result, then, is that there is a dilemma for Muslims today: how are Muslims to respond to the different understandings of knowledge and truth, and the correspondingly different models of education? But there is another concern. If there is a claim to freedom of religion, in the sense of a freedom to express, to disseminate, to question, and to teach, what are the institutions in which such a freedom is to be exercised, and who should control them? This latter question should surely be a central one in contemporary debate.¹³

¹¹*Zakat* figures for 2004-2005 (according to the Secretary of Zakat and Usher, Government of Punjab), Zakat funds for Deeni Madaras (Religious Institutions) are as follows: allocated Rs. 163,382,000; used Rs. 17,210,781; unused Rs. 146,171,219.

¹²Tahir Andrabi, Jishnu Das, Asim Ijaz Khwaja, and Tristan Zajonc, *Religious School Enrollment in Pakistan: A Look at the Data* (Kennedy School of Government Working Paper No. RWP05-024. World Bank Policy Research Paper No. 3521, 2005); available at: <http://ssrn.com/abstract=667843> (19 March 2005).

¹³An earlier version of this paper was presented to the Ninth East West Philosophers' Conference, Honolulu, Hawaii, May 29 – June 10, 2005.

THE RIGHT TO RELIGION

Bambang Sugiharto♦

1. Introduction

In the so-called 'post-secular' age of today, religions have come back to be determinant. This is not always a blessing, for today a possible global disaster due to religious conflicts keeps looming behind global relationships. In such a situation, modern human rights are in a strategic position to serve as a middle path or a meeting point among different religious interests. Nevertheless, while in the past religious traditions have helped to give birth to the human rights system, today the relationship between the former and the latter is much more complicated. On the one hand, the exercise of religion may well be subject to the evaluation of the human rights, but on the other, human rights need to be reformed in the light of various religious traditions. This essay will explore the complexity of the problem while taking as the basic assumption the belief that religion is not concerned simply with the relationship with God, but also, and above all, with the development of human ideals, with the growth of humanity in general.

2. Human Rights and the Resurgence of Religion

Modern human rights have led to a great awakening of religion around the globe. Ancient faiths once driven underground by autocratic oppressors have sprung forth with new vigour. In the former Soviet Union, for example, numerous Buddhist, Hindu, Jewish, Christian, Muslim, and other religious communities have been revitalized, alongside a host of exotic goddess, naturalist, and personality cults.¹ In postcolonial and post-revolutionary Africa religious groups have come to flourish in both conventional and inculturated forms, alongside a bewildering array of

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¹See John Witte, Jr., et al ed., *Proselytism and Orthodoxy in Russia: The New War for Souls*, Maryknoll, NY: Orbis Books, 1999.

traditional groups.² Many parts of the world have seen the rise of new faiths, like Adventists, Ahmadis, Bahāis, Hare Krishnas, Jehovah's Witnesses, Mormons, Scientologists, among others. Religion, in both traditional and new forms, has become the latest "transnational variable" of globalization.³

On the other hand, the very same human rights have also helped catalyze new forms of religious and ethnic conflict, oppression, and belligerence. In post-reformation Indonesia, as in the former Yugoslavia, new liberties have been converted into licenses to renew ancient hostilities and rivalries, with catastrophic results. In Sudan and Rwanda, ethnic nationalism and religious extremism have conspired to bring violent dislocation, persecution, false imprisonment, forced starvation, and savage abuses of thousands of rival religious believers. North America and Western Europe are no exception, as political secularism and nationalism have combined to threaten sects and cults that do not conform to the dominant culture.

What counts here are not so much the differences of how human rights are conceived as what the resurgence of religion actually means. In reality, the significance of human rights is closely connected with peculiar interests of religious communities within specific contexts. Rooted in such particular contexts, the resurgence of religion becomes a complex phenomenon. The resurgence of religion is not simply a feature of any one religion. Moreover, it is not some lack of development that makes people religious. It occurs in countries with different religious traditions and in countries at different levels of economic development.

In some respects, the global resurgence of religion exposes the larger crisis of modernity. It reflects a deep disillusionment with perspectives that reduce reality only to that which can be perceived and controlled through reason, science, technology, and bureaucratic rationality, leaving out the spiritual or the sacred dimensions of life. There is a greater sensitivity today to the human limits of the "disenchantment of the world" (following Max Weber) among postmodernists, theologians, cultural critics, artists, and activists. They share the same concerns about materialism, the

²See Abdullahi Ahmed An-Na'im ed., *Proselytization and Communal Self-Determination in Africa*, Maryknoll, NY: Orbis Books, 1999.

³See Susanne Hoeber Rudolph et al ed., *Transnational Religion and Fading States*, Boulder, CO: Westview Press, 1997.

environment, and the commodification of everyday life in the global economy, which have resulted in the process of impoverishment of the spiritual dimensions in human life. The third millennium may well be a post-secular one.⁴

In other respects, the global resurgence of religion is the result of the failure of the modern secular state to produce enduring democracy as well as authentic sense of identity. Ernest Gellner has argued that since the period of colonial occupation, the developing countries have been confronted with a dilemma: Should they emulate the West in order to gain equality in power, thus, spurning their own culture? Or, should they affirm their own cultural and religious traditions, thus, remaining materially weak?⁵ In many countries, the desire for a new identity and rapid development was pursued in the first years after independence by emulating the West. But after several decades it proved to be a failure, which was evident in the decline of politics into authoritarianism, patrimonialism, corruption, and even the disintegration of some states. This has happened in Indonesia, Turkey, India, and particularly in Africa, since the 1980s.

The global resurgence of religion also manifests the search for authenticity by way of the "revolt against the West." The first stage of the revolt was the anticolonial struggle for independence and equality; the second was the struggle for racial equality and economic justice; and, the third, the struggle for cultural liberation.⁶ The latter is a struggle to reclaim the traditional cultural and moral practices. While, externally, the tendency to spurn whatever is foreign grows stronger; internally, the rivalry between existing religious communities confuses 'foreign' with 'other' or 'different'. Rival religious communities persecute one another as 'foreign' or 'inauthentic'. This is exacerbated when ethnicity is conflated with religious identity, and religious groups conspire with political leaders. In part, this is a theological war on 'Truth'; in part, it is a legal war over regulations restricting the constitutional rights of their 'foreign' religious

⁴See Scott Thomas, "Religious Resurgence, Postmodernism, and World Politics," in John Esposito et al ed., *Religion and Global Order*, Cardiff: University of Wales Press, 2000, 38-65.

⁵See Ernest Gellner, *Postmodernism, Reason and Religion*, London: Routledge, 1992.

⁶See Hedley Bull, "The Revolt against the West," in Hedley Bull et al ed., *The Expansion of International Society*, Oxford: Clarendon Press, 1984, 217-28.

rivals. Beneath a shiny constitutional veneer of religious rights and freedom for all, some countries have come to develop a legal culture of overt favouritism of some faiths and overt oppression of others. On the one hand, this shows a greater sensitivity to religious and cultural values in the formation of social policy, and, on the other, a greater critical awareness of the fact that the so called 'universal' human rights have been globalized without due regard for what is most human and most right in particular countries.⁷

For all these reasons, the global resurgence of religion and the spread of cultural pluralism have become so complex that the notions such as "clash of civilizations," "fundamentalism," or "religious extremism" do not seem to suffice to understand them. What is happening is that a truly multicultural global international society is being formed for the first time in the history of human race, along with its large-scale religious change and socio-cultural effects.

3. The Critique and Challenge of Human Rights

There is a further paradoxical situation today concerning human rights when it is connected to religion. While, on the formal platform, awareness of religious freedom (i.e., the conviction that human beings have an inalienable and personal right to determine their own attitudes toward life, within the limits of public order, without any coercion on the part of civil authority) is growing, the fact is that today freedom and equality are hard to find anywhere. Worse still, human rights paradigm has itself been under severe criticism, both from the philosophico-cultural and the theological points of view.

Some distinguished philosophers have come to see the human rights paradigm as an experiment that is no longer effective, even a fictional faith whose folly has now been fully exposed.⁸ Others have bolstered this claim with cultural critiques, that human rights are instruments of neo-colonization through which the West imposes its values on the rest, even

⁷See Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse*, New York: Free Press, 1991.

⁸See samples and critical analysis of the views of Alasdair MacIntyre, Richard Rorty, Jean-François Lyotard, and others in Max L. Stackhouse and Stephen Healey, "Religion and Human Rights: A Theological Apologetic," in John Witte, Jr. and Johan D. van der Vyver ed., *Religious Human Rights in Global Perspective: Religious Perspectives*, The Hague: M. Nijhoff Publishers, 1996, 485-516.

toxic compounds that are exported abroad to breed cultural conflict, social instability, religious warfare, and, thus, dependence on the West.⁹ There are also other critiques, that rights talk is the wrong talk for meaningful debate about deep questions of justice, peace, and the common good.¹⁰

When philosophico-cultural critiques encroach upon the human rights, theological critiques go the other way round. They corroborate these rights by adding to them some necessary religious basis. Theological critiques point out that, without religion, human rights become too captive to Western libertarian ideals. Many religious traditions – whether Buddhist, Confucian, Hindu, Islam, Orthodox, Reformed, Taoist, or traditional stock – cannot conceive of, or accept, a system of rights that exclude religion. Religion is for these traditions inextricably integrated into every facet of life. Religious rights are an inherent part of rights of speech, press, assembly, and other individual rights, as well as ethnic, cultural, linguistic, and similar associational rights. Without religion, the state is given an exaggerated role as the guarantor of human rights. The simple state-versus-individual dialectic of many modern human rights theories leaves it to the state to protect and provide rights of all sorts. In reality, the state is not, and cannot be, so omni-potent. Numerous “mediating structures” stand between the state and the individual, religious institutions prominently among them. Religious institutions can offer some of the deepest insights into norms of creation, stewardship, and servanthood that lie at the heart of human rights. Besides, religious theories of rights provide a vital rationale for organic linkage between rights and duties. Without them, rights become abstract, with no obvious limit on their exercise.¹¹ Without religion, many rights are also cut from their roots. The right to religion is the mother of many other rights. To

⁹In Indonesia today conflicts between religions (Islam and Christianity, in particular) have often been apprehended in terms of violation of human rights. But some religious communities (mostly the Muslim groups) suspect it to be simply a political game, masterminded by the West, a strategy used by the West to curb Muslims movement. See also critical discussion of this thesis and its manifestations in recent debates about the cultural and moral relativity of human rights, in David Little, “Religion and Human Rights,” *Journal of Religious Ethics* 27, 1 (1999), 151-77.

¹⁰See Glendon, *Rights Talk*.

¹¹See John Witte, Jr. “The Spirit of the Laws, the Laws of the Spirit,” in Max L. Stackhouse et al ed., *The Spirit and the Modern Authorities*, Harrisburg, PA: Trinity Press International, 2001, 86-87.

ignore religious rights is to overlook the conceptual, and historical, source of many other individual and associational rights.¹²

However, acknowledging the religious dimension of human rights is one thing. It is quite another thing for religious bodies to appropriate human rights within their own politics and theologies. Here norms of human rights challenge the structure of religious bodies. While these norms teach liberty and equality, most religious bodies teach authority and hierarchy. While they encourage pluralism and diversity, many religious bodies require orthodoxy and uniformity. While these norms of human rights teach freedom of speech and expression, several religions teach duties of silence and submission. Moreover, they are the creed of a secular faith born of the Enlightenment. The advocates of human rights describe the norms as "civic faith," "new world religion," "new global moral language," etc.¹³ Religions might well have been the mothers of human rights in earlier eras, perhaps even the midwives of the modern human rights revolution, but when their institutions have come to grow bigger and bigger, religions become too expansionistic and monopolistic, too patriarchal and hierarchical, too antithetical, to the very ideals of pluralism, toleration, and equality inherent in a human rights regime.

These paradoxes, in turn, suggest that religion and human rights need to be brought into a closer symbiosis. On the one hand, human rights norms need religious narratives to ground them. The abstract human rights ideals of the good life and the good society depend on the visions and values of human communities and institutions to give them content and coherence. Religion is an ineradicable condition of human lives and human communities. Religions provide many of the sources and scales of values by which many persons and communities govern themselves. Religions help define the meanings and measures of shame and regret, restraint and respect, responsibility and restitution that a human rights regime presupposes. Religions must, thus, be seen as indispensable allies

¹²For the religious individual, the right to believe leads to the rights to assemble, speak, worship, evangelize, educate, and travel. For the religious association, the right to exist invariably involves the right to corporate property, collective worship, organizing charity, parochial education, freedom of press, and even autonomy of governance. Witte, Jr. "The Spirit of the Laws, the Laws of the Spirit."

¹³Robert Traer, *Faith in Human Rights*, Washington DC: Ethics and Public Policy Center, 1991, 10-11.

in the modern struggle for human rights. To exclude them from the struggle is impossible, indeed, catastrophic!

On the other hand, religious narratives need human rights norms both to protect them and to challenge them. Religious narratives, be they in the form of sacred texts or canons, in fact, say more about commandments and obligations than about liberties and rights. Their theologians and jurists have resisted the importation of human rights as much as they have helped in their cultivation. Their internal policies and external advocacy have helped to perpetuate bigotry, chauvinism, and violence as much as they have served to propagate equality, liberty, and fraternity. The blood of thousands is at the doors of our churches, temples, and mosques. Pogroms, crusades, jihads, inquisitions, and ostracisms have had a devastating effect within and among these faiths. Unless religious traditions are able to rediscover the human rights from within, religions will never succeed in resolving their internal paradoxes and inconsistencies.

4. Human Rights and Their Religious Roots

Human rights are neither new nor secular in origin. In substantial part human rights are the modern political fruits of ancient religious beliefs and practices, such as ancient Jewish constructions of covenant and *mitzvot*, original Qur'anic texts on peace and the common good, medieval Catholic concepts of *ius* and *libertas*, classical Protestant ideals of freedom and law, etc.

Many of the common formulations of individual and collective rights and liberties of today were first inspired neither by a John Locke nor by a James Madison, but by Christian apologists as early as the Patristic era. The most explicit references to general religious freedom among the apologists are found in Tertullian and Lactantius. "It is a matter of both human and natural law," says Tertullian, "that every man can worship as he wishes... It is not in the nature of religion to impose itself by force." Augustine expressed this freedom in a famous formula: "No man can believe unless he wants to" (*credere non potest homo nisi volens*). The Patristic Age contributed some important starting points concerning religious freedom. Among other things are freedom to accept the faith and the refusal of extreme penalties for religious offences.¹⁴

¹⁴See Joseph Lecler, "Religious Freedom: An Historical Survey," in Neophytos Edalby et al ed., *Religious Freedom*, New York: Paulist Press, 1966, 3-20.

In the Middle Ages, in spite of the Church's complete lack of tolerance toward heretics, the medieval canonists and theologians also help a great deal in laying the basic formulations for the modern human rights. Medieval canon law was based, in part, on the concept of individual and corporate rights (*iura*, the plural of *ius*). A good deal of the rich medieval canon law was cast, substantively and procedurally, in the form and language of rights.¹⁵ The basic medieval rights formulations of exemptions, immunities, privileges and benefits, and the free exercise of religious worship, travel, speech, and education have persisted to this day.

Later, during the Protestant Reformation, Martin Luther, John Calvin, Thomas Cranmer and other sixteenth-century reformers, began their movements with a call for freedom from the ecclesiastical regime – freedom of the individual conscience from intrusive canon laws and clerical controls, freedom of political officials from ecclesiastical powers and privileges, etc. The Protestant Reformation permanently broke the unity of law and religion in Western Christendom, and thereby introduced the foundations for the modern constitutional system of confessional pluralism. The Protestant Reformation also broke the primacy of corporate Christianity and gave new emphasis to the role of individual believers with their own dignity. All persons stand equal before God and, therefore, they must stand equal also before God's political agents in the state. Protestant theology provides unique balances between liberty and responsibility, dignity and depravity, individuality and community, politics and pluralism. Such doctrines of the person and society were, then, cast into modern democratic social forms.¹⁶

In the twentieth century, the Vatican Council II (1962-65) in the Catholic Church has played an important role again in the enhancement of the awareness of human rights. In a series of sweeping new doctrinal statements, the Church came to endorse human rights and democratic principles. Every person, the Church taught, is created by God with dignity, intelligence and free will, and has rights flowing directly and simultaneously from his very nature.¹⁷ Such rights include the right to life and adequate standards of living, to moral and cultural values, to religious

¹⁵See R. H. Helmholz, *The Spirit of Classical Canon Law*, Athens, GA: University of Georgia Press, 1996.

¹⁶See John Witte, Jr., "The Spirit of the Laws, the Laws of Spirit," 100-101.

¹⁷*Pacem in Terris* (1963), paragraph 9.

activities, to assembly and association, to marriage and family life, and to various social, political, and economic benefits and opportunities. The Church emphasized the religious rights of conscience, worship, assembly, and education, calling them the "first rights" of any civic order. Governments everywhere were encouraged to create conditions conducive to the realization and protection of these "inviolable rights" and to root out every type of discrimination, whether social or cultural, whether based on sex, race, colour, social distinction, language, or religion. As a corollary, the Church advocated limited constitutional government and separation of church and the state. The vast pluralism of religions and cultures, and the inherent dangers in state endorsement of any religion, in the Church's view, rendered mandatory democratic forms of government.¹⁸ From then on, the Catholic Church was thereby transformed from a passive accomplice in authoritarian regimes to a powerful advocate of democratic and human rights reform. The new wave of political democratization that has been breaking over the world since the early 1970s, such as those in Brazil, Chile, Poland, Hungary, Ukraine, the Philippines, and elsewhere, owes much of its inspiration to the teaching and activity of the Catholic Church.

In the Jewish tradition, the fundamental source of religious freedom is to be found in God's intention that humans, of their own free will, seek and serve God. Both God's omniscience and humanity's freedom are asserted. The risk of freedom, of course, is its abuse, but the exercise of freedom in faith results in a growth of one's humanity and in a deepening of one's sense of oneness with God. Some rabbis were even ready to suggest that God's power in the world is dependent on humanity's proper exercise of its freedom.¹⁹ Human beings are granted by God on a fundamental freedom – the freedom "to fear heaven." It is only in the exercise of this freedom that they can experience God's presence. All other freedoms that human beings enjoy derive from the fulfilment of this first and primary freedom. For in seeking after God, humans must create society, join in labour with others, pursue peace and make justice secure. God's word obliges man to achieve justice in society and to pursue peace. God's covenant was made with the entire people, and not merely with the

¹⁸See *Dignitatis Humanae* (on Religious Freedom) (1965).

¹⁹See Rabbi Arthur Gilbert, "Religious Freedom in Jewish Tradition and Experience," in Neophytos Edelby et al ed., *Religious Freedom*, 21-36.

elders or the priests. Thus, Judaism taught that the sanctuary and government, the priests and prince, were vessels of God's grace.²⁰

In the Islamic tradition, religious freedom is rather more problematic. While many Muslim states today have a democratic constitution which guarantees freedom of religion, their notion of the exclusive sovereignty of God alone at the centre of human affairs often makes it difficult for Muslims to really appreciate the sovereignty of politics, of economics, of culture, of family, or of nature, apart from God's rule and authority. The "sovereignty" of secular discourse, including that on religious freedom or general human rights, does not have the same weight in Muslim thought that it has, or is claimed to have, in the Western culture.²¹ The Islamic concepts of obedience, service and servanthood to the absolute rule of God are related to doctrinaire defiance of idolatry, of the world's false absolute and of modernization as a self-sufficient autonomous process. In such a framework, particularly in Muslim states, the modern idea of full equality of rights for all citizens without religious distinction is still controversial. Historically, during the Medina period, Muhammad promulgated a constitution in which he offered protection and security to the warring tribes living there. The constitution, usually considered by the Muslims as the "first democratic constitution in the world," indeed, offered a new element of social stratification, one based not on blood and kinship solidarity but on religion and obedience to the Prophet. At the top of the social order was the Prophet himself, followed by his companions (*ashab*), the ranks of emigrants (*muhajirun*), the Medinan helpers (*ansar*), the tributary populations, captives taken in razzias and similar sources, and those waiting to be subdued. Such were the delineations of the new "Pax Islamica."²² In this framework Christianity and Judaism, for example, since they are still considered as basically true, must not be molested and are given a right to freedom and respect within certain limits, that is, as long as they observe the treaty which binds them to Islam and pay their tribute regularly. The Islamic religion cannot be imposed on followers of other religions. Hence, one of the finest sayings of the Qur'an reads:

²⁰Gilbert, "Religious Freedom in Jewish Tradition and Experience," 24.

²¹See Lamin Saneh, "Muhammad in Muslim Tradition and Practice," in Max L. Stackhouse et al ed., *Christ and the Dominions of Civilization*, Harrisburg, PA: Trinity Press International, 2002, 301.

²²Saneh, "Muhammad in Muslim Tradition and Practice," 292.

"There is no coercion in religion; by itself, truth is enough to distinguish it from error."²³ On the other hand, however, while followers of other religions are free to become Muslims, in reality a Muslim is not free to become a follower of another religion. Such a conversion used to be punishable by death, or at least, today, the convert is subjected to all kinds of threats and social pressures. Today, in many states that have a majority of Muslims, such as Indonesia, Malaysia, and Sudan, the tendency to proclaim Islam as the religion of the state still prevails. While this does not necessarily cause religious discrimination with regard to the non-Muslims, the latter may well fear that this will lead to a legalized return to their condition of being "protected and subjected." Even in modern Muslim states, other religions are tolerated but not really accepted. Islam remains the religion. Thus, the recognition of full equality of rights for all citizens without religious distinction continues to be unresolved.

5. Repositioning Human Rights

The human rights system is, in fact, not a static belief system. It is fluid, elastic, and open to challenges and changes. It is a relative system of ideas and ideals that presupposes the existence of fundamental beliefs and values that will constantly reshape it. It is the *jus gentium* of our times, the common law of nations, which a variety of Hebrew, Greek, Roman, Christian, and Enlightenment movements have historically nurtured in the West, and which today still needs the constant nurture of multiple communities.²⁴

It is beyond doubt that current formulations of human rights are suffused with fundamental libertarian beliefs and values, some of which run counter to the cardinal beliefs of various religious traditions. The modern cultivation of human rights in the West began when both Christianity and the Enlightenment seemed incapable of delivering on their promises. In the middle of the twentieth century there was no second coming of Christ promised by Christians, no heavenly city of reason promised by enlightened libertarians, no withering away of the state

²³Qur'an II, 257.

²⁴The term *jus gentium* is borrowed here from John Witte, Jr., who rightly used the term *jus gentium* to signal the place of human rights as "middle axioms" in our moral and political discourse. See John Witte, Jr. "The Spirit of the Laws, the Laws of Spirit," 89-90.

promised by enlightened socialists. The modern human rights movement was, thus, born out of desperation in the aftermath of the World War II. It was an attempt to find a world faith to fill a spiritual void. Nevertheless, in the decades following the World War II, a "human rights revolution" erupted. In America and Europe, this rights revolution yielded a powerful grassroots civil rights movement. In Africa and Latin America, it produced agitation, and eventually revolt, against colonial and autocratic rule. At the international level, the Universal Declaration of 1948 inspired new declarations, covenants, and conventions on more discrete rights. Thus, within a generation, human rights had become the "new civic faith" of the post-war world order.²⁵

In the global context of today, the human rights system may well be placed as "middle axioms" in our moral and political discourse. Historically, Hebrew, Greek, Roman, and Christian writers alike spoke of a hierarchy of laws – from natural law (*ius naturale*), to common law (*jus gentium*), to positive law (*ius civile*). The natural law was the set of immutable principles of reason and conscience, which are supreme in authority, and must always prevail in instances of dispute. The positive law was the set of enacted laws and procedures of local political communities, reflecting their immediate policies and procedures. Between these two sets of norms was the *jus gentium*, the set of principles and customs common to several communities and often the basis for treaties and other diplomatic conventions. The contents of the *jus gentium* did gradually change over time and across cultures, as new interpretations of the natural law were offered, and as new formulations of the positive law became increasingly conventional. But the *jus gentium* was a relatively consistent body of principles governing a person and a people.²⁶

As *jus gentium*, human rights law is derived from and dependent on the transcendent principles that religious traditions continue to cultivate. It also informs, and is informed by, shifts in the customs and conventions of various state law systems. Thus, human rights law does gradually change over time: just compare the international human rights instruments of 1948 with those of today. But human rights norms are a relatively stable set of ideals by which a person and community might be guided and judged. For

²⁵See Jacques Maritain, *Man and the State*, Chicago: University of Chicago Press, 1951, 110-11.

²⁶See Witte, Jr., "The Spirit of the Laws, the Laws of Spirit," 90.

this reason, religious bodies must again nurture and challenge the middle axioms of the *jus gentium* with the transcendent principles of the *ius naturale*. Such an effort, however, must be part of a collective discourse of competing understandings of the *ius naturale* – of competing theological views of the divine and the human, of sin and salvation, of individuality and community – that will serve constantly to inform and reform, and to develop and deepen, the human rights ideals now in place.

6. Conclusion

Being the source of transcendental insights, religions have the responsibility to enhance the higher and deeper understandings of what “becoming more human” is supposed to mean, especially in the changing and conflicting global context. In order to do so, religious bodies must have the courage and openness for self-criticism, a hermeneutic of suspicion, and an awareness of their often self-deceptive defence mechanism; that is, they must be aware of what Derrida calls the “auto-immunization” of religions.

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